Mr. Hunts ARGUMENT

FOR THE

Bilhops Right:

WITH THE

POSTSCRIPT

With fome Additions.

TOGETHER WITH

Two Discourses about the Succession, and Bill of Exclusion.

IN ANSWER

Affirming the unalterble Bight of Succession, and the Unlawfulness of the Bill of Exclusion.

In turbas & discordias pessimo cuique plurima vis; par & quies bonu artibus indigent. Tacit. Hist. 1.4.

LONDON:

Printed for the Author, and are to be Sold by the Book-Sellers of London and Westminster. 1682.

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POSTSCRIPT

With fome Additions.

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baryon never differentied or orge

RIGHT HONOURABLE,
JOHN, Earl of RADNOR,
Viscount Bodmin, Lord Roberts, Baron of Truro; And
Lord President of His Majesties most Honourable
Privy Council.

My Lord,

The Reason that moved me to inscribe these sollowing Discourses to your Name, is to create a prejudice, and bespeak a good esteem with all Mankind to whom your Lordships Character is arrived, of my Integrity and Sincerity therein. Your Lordships free and open Acknowledgment of your self to the World, That A 2 you

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you have liv'd your inward Nature se That you never diffembled or difguifed or your self, avowed plainness, and de ce spised all Arts, HIntrigues, and Appli-th cations, hath made your Lordshipst Universally Honoured every where of and by all forts and parties of Men en to tirely trusted; and you are become anpi Illustrious instance, That nothing isw so popular in a Noble Person, as Sim-or plicity and open Sincerity; no, noto Bounty and Beneficence it self, to which G Office likewise your Lordship is norde indebted, or in any arrear. A greater Moralist prescribes and commends to ar all Men that would hold on an unin-D terrupted Course of Virtue, and pre-g ferve their Innocence, to put on or North as a Defensative and Out-guardst to Virtue; That is to say, a stiffness and inflexibleness of Mind, something T that can resist those soft and gentle pre-C judices that perswade undue compli-pances, and abuse the facile, weak, and tender Minds to accommodate themfelves

e selves in little Matters to the present edoceasions, until by little and little, sine cerity is almost quite perished from ithe World, and mischies apt to deipstroy it ready to follow in consequence of fuch unmanly compliance. Men nto relieve themselves from inward Reinproach whilst they contradict their inisward sense, have found out the specinous names of Civility, Submission to otour Superiours; Nay, have Usurpt the hGlorious name of the Virtue of Moordesty (which is the Noblest and most tample Virtue, which gives Rules that oare almost comprehensive of our whole 1-Duty; for to this Virtue we owe a greatness of Mind, and a reverence of nour selves, as well as equability and Judice to others,) to varnish over Dissismulation, Craft, Hypocrifie, Flattery, Treachery, Falshood, and a deceitful Conversation: And are bold to Reproach the severely Honest with the Names of Morose, Disloyal, and Dis-obedient, to turn off from themselves A 4 the

you have liv'd your inward Nature of That you never dissembled or disguised your self, avowed plainness, and despised all Arts, Intrigues, and Applications, hath made your Lordship Universally Honoured every where and by all forts and parties of Men en tirely trusted; and you are become an Illustrious instance, That nothing is so popular in a Noble Person, as Simplicity and open Sincerity; no, not Bounty and Beneficence it felf, to which Office likewise your Lordship is not indebted, or in any arrear. A great Moralist prescribes and commends to all Men that would hold on an uninterrupted Course of Virtue, and preferve their Innocence, to put on Northway as a Defensative and Out-guard to Virtue; That is to say, a stiffness and inflexibleness of Mind, something that can resist those soft and gentle pre-judices that perswade undue compli-ances, and abuse the facile, weak, and tender Minds to accommodate themfelves

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the shame of their own prevarications and utter defections from Publick Inte dy rest; which God knows Men easily slide ac into insensibly, if they once suffer them for selves for any regard whatsoever to be or carried off from the Rule of Right hi for they bring themselves under some th kind of Necessities of complying with re the Evils their first aberrations occasi ve oned, by greater faults, which increase n reciprocally at every turn, until they be come desperate Out-laws, absolve re themselves from all Duty they owe to h their King and Countrey, abandon th themselves to Chance, to live and sub fift by untoward shifts and Arts, which I increase their first Guilts, and turn their f Errors into unpardonable Crimes: Hat ving Ship-wreck'd their Consciences, they care not if the Government be wreck'd too, to which they have made themselves so very obnoxious.

Thus whilst Men please others they lose themselves, and from Flattery it is trasfily proceeded to the most mischie vous Treacheries.

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He that despiseth his own way, shall 115 e dye, faith King Solomon. A Man that de accommodates himself to serve Occan fions, diffembles himself, and appears be other than he is; will foon extinguish t his Conscience, and dye to Virtue: he nd that doth not honour himself, will not th regard Men; and they that do not Resi verence Men, will not fear God: Qui

ise non verentur bomines, fallent Deos.

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The Arts of Complaisance so much oe . ve relyed upon at the Courts of Princes, to hath extruded the Laws of Honesty on thence, where they are most necessary. b This hath made the Condition of great ch Men very uncertain and fortuitous, infinitely Subject to Chance and Hazard, the Thrones of Princes unstable and tottering, and left the Peace and Security of Kingdoms scarce at any time undisturbed with Fears and Jealousies, evil surmises, and contending Factions, upon Reasons true and false, real and feigned causes. Every Man almost is fometimes complaining of the uneafie

condition that he himself concurs to make to himself, but is always in some th fort miserable by fearing from others th whom he gives too much cause to fear T from himself, and to mistrust him for up his double dealing. But what other ar consequence can they expect, that ever th feign, and uncessantly dissemble, but W not to be believed, not to be trusted, ne hated for their baseness, and seared m for that great Evil they would dissem- le The greatness of the Evil designed, is justly measured by the coarse and base Artifices they use to hide them: They are impudent to all the discerning and wife, whilft they bufily fet themselves by mean and base Arts to abuse the Fools and inconsiderate, the vain and the credulous; whom they have at the same time in the greatest scorn, whilst they have nothing to value themselves upon, but that such little Men are deceived by them.

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But there is another fort of Men that design well for the Publick, whilst s they dispense with the strict Laws of r Truth and Sincerity. But I cannot tell r upon the whole Matter, whether they ar are not more hurtful to themselves, or than profitable to the Commont Wealth, by their well-designed and ho-, nestly-directed compliances and dissid mulations. I mean, such Men as - lend themselves to the Service of the Publick; who are so kind as to disfigure themselves, to take other shapes dand appearances of what they are not: Who are content to neglect their Honour and Reputation of Sincerity, whilst under a feigned assentation they hinder all the evil, and do all the good they can do, and the present state of things will permit; and fuffer the rest with a great compassion for the Publick Weal. But such Mens Praise must come from God, their Honour will never be entire amongst Men; and after all the difficult and hazardous Services

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vices they can perform for their King and Countrey, their Honour will still remain suspected, doubtful, and obscure or amongst Men, who must judge action cording to appearance. When we have been often abused by the fairest pre Lo tenders to a regular and constant Vir fro tue, we cannot easily trust those that have sometime dissembled and re-do prest it.

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My Lord,

M It is a peculiar Felicity of your Lordship, that from a Generous and Honest Nature, and a Noble Mind, rather than from the institution of Books (though your Learning is famoufly great) to which you feem made ratin ther than instructed; your sincerity is L incorruptible, and stands in no need of that Artificial Defensative and Outwork which is prescribed by great Moralists as necessary to weak Minds to secure their Virtue, especially when Virtue it self is out of Repute and dis-You graced.

You have perfifted constantly in one even Tenor of Life, have been Uniform, Regular, and Confiltent with your felf. There may have been some complyance in appearance to your Lordship, but you never yet departed from your felf; nay, you have not fo much as incur'd the suspicion of so doing. No Man makes any Question about your Lordship, or what it is you design; it is no Mans Enquiry, no Mans doubt: You have been always the fame, and are, as every Man concludes, immutably so. You are not ks and various Opinions, there is no need ly of a Cryptique Man to unriddle any intricacies in the Course of your 15 Life. ed

> Votiva pateat veluti descripta Tabella Vita senis.

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No false infinuations can hurt your Name: No Service but what is Just will

will ever be imposed upon you; no to Mysteries of Iniquity will be commit an ted to your Breast: no Man will be Co offended at you, but he that hath fuf reason to be displeased with himself, or and takes himself in a sort reproved by every honest Man, as every Man doth that condemns himself. You cannot mi be difgraced by any Faction, but a and real dishonour will return upon those W that attempt it: Every honest man the will be sensible, if you (being reckoned tru and esteemed a Publick Good) are lest the fened: And you cannot fail of Ho-ho nour from the worst of Men, when in to Honouring you they Honour them-you W selves, and honestate their designs. Sh

My Lord,

You represent to us the Condition of the Nation not desperate and incurable, whilst you preside in His Majesties Councils: for no Man can believe you would be an unconcerned Spectator of our Ruine, or the Preparations

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to it; or that you would contribute any thing thereto, by giving us a vain confidence of a secure condition, and fuffer your fam'd Integrity to be Sub-orned to so mischievous a Deceit.

My Lord,

Your Lordship hath afforded a

and simplicity to the Practice of the World; you have Honoured thereby the Age wherein you live, acquired thereby become a Publick Blessing. I hope I shall have your Lordships Pardon in making a further advantage of your Lordships Noble Integrity and Wisdom by presuming to offer these Wisdom, by presuming to offer these Sheets to your Lordships favourable sudgment. That I adventure to appear to so great a Judgment, is the best Argument I can use to the World for my Integrity and honest designment therein; and besides, the good Opinion of so great a Man as your self, would no give great assurance to my own Conto

If your Lordship doth think any thing therein useful to the World -I am fure it will have your Lordships Countenance, which will make them more useful, since, as my Lord Bacon observes, The Cause of Laws, and Defence of the ancient State, bath ever found this Priviledge, That fuch as for their own Interest disturb the same, Excuse (i they Honour not) their Defenders.

My Lord.

I shall ever pray for increase of Horn nour to your Lordship, and that fulend of Years you may change this Life for a better; to which I am bound, fo that I esteem you a Publick Good, he I had no particular Obligations (as and have) to your Lordship; and for the afe greatest Reason I take my felf Oblithe ged to be in true Honour of you Lordship, dica

My Lord, Your Lordships Most Obedient Servant, THO. HUNT

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raise on any precessors a Christian inch.

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and learning, His Argument for the Bishops Right of judging in Capital Causes in Parliament, for their being one of the three States of the Realm, and that their Right is unalterable by Law, was written above Otwo years since, and prepared for the Press, time ulenough to be made publick against an expected o Session of Parliament, in October 1679. the Parliament being Prorogued from that time until January, the Author was willing to respite the Publication to advise with his second thoughts, is and again to review what he had written in a thrase of this weight and moment; and the rablither, for that he had but a short time allowed ou published by an excellent Person, a Book in Vindication of their Right of judging, called The Grand Quelion, Sufficient to give Satisfaction, if the World were just and impartial, and disposed to make right Judgment in the Cause.

It may well be reasonably expected that Chritian People should not be only just, but favourable

rable to any pretence of a Christian Bishop to any secular trust that does not lessen the dignit of the Office, and seems not unworthy of his Character; which as it exempts him from mean an sordid Offices and affairs of an inferior and mor private concernment, so it commends him to the Government of matters of a more public and universal influence, such as require the most improved wisdom and learning, and a noble virtue.

for It seems to me most unreasonable that thost it that are the great and principal Expounders R the Christian Law, which gives Law to all Law to and instructs men to discharge their several Oby fices both publick and private; that those while are the great Guides of our Consciences, and fril whose Directions and Institutions we form offil Judgments in the greatest intricacies and doub on that perplex humane affairs; that the Guides lic a Religion which is formed all to life and primi stice; for the making Governments equal, as ap private men good and obedient, which is littren else but an Obligation to Justice and Charityrea and principally pursues that which is the entrha design, and whole business of Government: I sapre it seems to me most absurd and incongruouth that this Order of men at any time ought to fran Shut out of that Council and Court, where Lauche are made, and Rules given, for the Governme wit of a Christian Common-wealth, where the m. Ten difficult and intricate causes are to be heard a to determine

to determined, and where an unlimited power reit mains of censuring the Actions of the greatest ba men; and the administration of publick affairs, and the safety of the Nation are consulted, which or cannot be long preserved but by pursuing the dictates of a wife Religion: Such is the Christian Religion; if any other, we should dishonour it by comparing it to the best.

164 Paganism became despicable and abandoned Soon after its publication: Tet Tully in his Orahostion ad Pontifices, magnifies the wisdom of the Romans as Divine, in advancing the Pagan Priests to the highest places in their Common-wealth, O by which the Common-wealth he saith was prewhiferved. Cum multa Divinitus, Pontifices, à Majod ribus nostris inventa atque instituta sunt, tum ni-phil præclarius, quam quod vos eosdem & Religiub onibus Deorum immortalium & summæ Reipubes licæ præesse voluerunt: Ut amplissimi & clarissipr mi Cives Rempublicam bene gerendo, Religiones an sapienter interpretando Rempublicam conserva-littrent. Such an Opinion more duly and with better rity reason our Ancestors conceived of the advantage en that might accrue to the Nation by advancing the I sa Prelates of the Church into the Eivil Government.
wou Thereupon they have made them necessary to it, and to framed the Government in a sort to depend upon Lastehem, and left it scarce able to maintain it self me without them in its present constitution. m Temporal Barons will soon find themselves unable d a to maintain their own Dignity, and to sustain nine that

that Province that is allotted to them in the Go- S vernment, unassisted with the Interest and author rity of the Prelates, the Spiritual Barons, a U mighty Power if they be, as they ought to be, of venerable esteem with the People.

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If the present Bishops are not all so happy as to be possess such an esteem, we know what cause to as- shi sign for the same, viz. the unhappy Schism, that hath too long continued in our Church, hath, for Se its own Justification after they are almost sham'd m out of the scruples which first caused the Separa- to tion, sought occasions against the Persons of the Is Bishops; and rather than they will want faults to of complain of, the Order it self must be loaded with st all the faults of all the Bishops in all Countries and re Ages, and they adventure now to disparage their in persons for the sake of their Office. But sure it is folly that can fall upon no People, but such who by the evils they feel or fear, are vext out of their un derstanding, to suppress any Office that is necessary to any Common-wealth in any form of Government for the faults of the Officers for the time being.

But too true it is, that a form of Governmen while established, may be so utterly misunder stood by the most, when it is not, or not dul administred, that a true and exact description it, and a discourse of the Offices and Functions the several parts of the Government would taken by them for some Utopian Common-wealth or no better please them than a description the strength of an impregnable Fort, once the Securit

Security of the Nation when invested by the Enemy. A Lecture of a Learned Physician of the a Usus Partium will not give fight to a blind Eye, of nor motion to a withered Hand; and no body is warmed or comforted by a painted fire: But God to be thanked we are not yet destitute of the bene-

as fits of a good Government.

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at . Another cause which I apprehend may much lesfor sen the Bishops in the esteem of the People, and n'd make them want that Reputation that is necessary. ra- to every Governour in proportion to his Charge, the Is their manner of promotion. The Ministers to of State, whose business it ought to be to underith Stand the true Characters of men that are preferand red to that Office, are often mistaken; however ei in this Course they seem not to be promoted for their own Merit, but at the pleasure of the great Courtiers, and at best the Ministers of State can do no more than recommend to the King for that Office the best of those they know, which are many times most unfit.

But this may be remedied when His Majesty shall please to give leave to the Clergy of the Diocess to choose their own Diocesan, their Choice notwithstanding submitted to the Kings approbation and Confirmation (which was permitted by Justinian the Emperour, and was in use in several of the best Ages of the Church) or by some other Method which may be advised by his great Council, whereby the greatest assurance may be given that the best and sittest persons be preferred

to Bishopricks: For the Common people are envi-by ous and suspicious, and what ever may be done by per bad means they always think it so. But if Bishops were promoted to their Sees with the gratual lations and applauses of the whole body of the are Clergy of the respective Diocesses, all that passeth is a under their advice and consent would likely meet in with the general satisfactions of the People, as it with would well deserve, as long as the Clergy can have in any Authority with them; That is, as long as the Nation continues Christian.

But the general Corruption of Manners and Gredecay of Piety is the great and trueft cause why the the Bishops unenvied enjoy no part of that Homour that our Ancestors Wisdom and Piety conner ferred upon their Order conformably to all other Rethe Ancient Christian Governments. But when the Virtue and Piety shall recover their esteem, the it Reverence of the Clergy will return. We are not we like long to expect this happy Change, for Vice is han now arrived to a Plethora, and like to burst by up its own excesses: And we well hope that the an mischiefs which we suffer will cure that evil from all whence they spring, and prevent the greater Cathelamities that it further threatens. However it he comes all good men to assist, to support the present Government, which is the cheapest, the surest way and the next way to arrive at a happy constitution of things.

This was the design of the Author of the Grand Ruestion. After the publication of that Book I laid R

vi-by all thoughts of publishing this Treatise: But by perceiving that notwithstanding what he hath Bis faid, the Right yet remains controverted, and tues Book is since Printed, wherein several things. he are objected in prejudice of this Right, and more eth's expected: I did review these Papers, whereeet in I found I had prevented those Objections, and it with a little application they would appear infave rificans. I did refolve to make this publick. the And besides that I apprehended some things material to the Question were omitted by the thy things to the same purpose hath its advantage. to Our great Courts affect to have several Arguon-ments on the same side in great Causes, and our her Reporters publish them. Besides herein several he it of further usefulness to the publick. Our Adnot wersaries also were treated too kindly by him, and is had deserved sharper reflections than he makes by upon them for their false and perverse Reasonings, he and ought to lose that Reputation which they om abuse to the burt of the Government. And furather, I thought it not for the honour of our fait culty that never fails to supply the worst cause with Advocates, That a question of this Nature, wherein both Church and State, Religion and

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on our Civil Policy is concerned, and the Right thereof not only clear and evident in it felf but also
nd reful to the State, should have not one of the

id Robe to plead for it.

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The Friends of the Canse will not grudge to read two Books for the Right as well as several against it, and the Adversaries of our Cause ought to suffer the like trouble themselves which they occasion to others.

These Considerations did induce me to publish this Treatise. I am well pleased that I am in the be gaged in a good Cause that was suited to our of earmy slender Abilities. Right is so strong an Arresti gument for it self, that it wants only light to hat discover it. Whereas an unrighteous Cause stands will in need of disquisings and shadowings, and all the charistices and setches of the Wit of ablenmen, to ghi give that a Colour, at least, which is destitute of the Law and Right.

runt of further afefulness to the publics, the sacratics of furthers and so restances that to a kindly by the and of and of and of a sacratics and adjectived for their fail and produced the sacratics and produced ought to loss that substitutes are such as a sacratics and and ought to loss that substitutes are such as a sacratics.

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CHAP. I.

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HE Nature of the Right, the Obligation to use it, the obvious indications of it, and benefit which may be reasonably expected in restion, and how it can be fairly determined, how to hath been opposed, and upon what Reasons and dividence the Right doth rely.

chap. II. The general prejudice against this to ght, from an Opinion conceived that the Clergy of the not to intermeddle in Secular Affairs, rev'd. That Bishops have been employed in the eatest trusts by Emperors, not hindred by the burch, but this hath been envy'd to them by the pe.

Chap. III. The Precedents that are produced om the Parliament Rolls against this Right, are ofidered. They prove not pertinent at mast, but re Neglects, not Argumentative or concluding ainst the Right.

Chap. IV. This Right cannot be prejudied by n user. The Nature of Prescription, that the ght in question is not presertptible. The Origilof this Right, that it is incident to Baronage. be Bishops when made Barons, and for what rea-En That all Offices whether by Tenure or Creation e Indivisible.

Chap.

Chap. V. Bishops never pretended the Assemble of Clarendon, when said to be absent. Bisho H sat in Judgment upon Becket, and his Crime, a Charge Treason, by which it is demonstrated the the Assis of Clarendon only put them at liber of but not under restraint from using their Right of Judging in Capital Causes.

Chap. VI. Bishops sat in Judgment upon John Earl of Moreton after King John, the Bishop Cl

Coventry, &c. for Treason.

Chap. VII. An Opinion prevail d and continued long, that no fudgment in Parliament whe not the Bishops were absent, was good, and their a cleance assigned for Error, to reverse Judgment of Treason in Parliament, provide by the Petition ige the Commons, 21 R.2. upon their protestation matter in they bad a Right, and that they saved it by the protestation. They pretended they could not atter in the matters then treated of by reason of the Cong non. But alledged no Law for their absence.

Chap. VIII. Of Canons, Ganon Law. Whall effect Canons can have upon a Civil Right. Try Canons prohibiting the use proves the Right.

Canons prohibiting the use proves the Right. e c Chap. IX. Bishops made their Proxies in Win pital Causes, which proves their Right and the ru thereby being virtually present, and the Laws run ness of making Proxies and such as they made.

ness of making Proxies and such as they made. x I Chap. X. A Repeal of the Parliament 21 Reir No prejudice to what the Bishops did in making their Proxies. The Opinion of Bishops present

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Ding necessary in Parliament continued in time

ho H. 5.

a Chap. XI. Bishops actually exercised this Autherity in 28 H.6. in the Case of William de la er of Duke of Suffolk. Opinion of the Judges, A Peer in Parliament. Of what consideration of cency can be.

op Chap. XII. Their Sitting in Judgment not so ch against the reason of the Canon, as their ason t to Bills of Attainder which was never con-be much. And the Nature of an Act of Attainder. Chap. XIII. Over-ruling a Plea of Pardon doth nt condemn the Criminal, and therefore they may on ge of such Plea; Though they are not to be pre-mat at the making of a Judgment of Condemnaiden.

th Quousque perveniatur in Judicio further extte in'd. And that which follows upon another

Chap. XIV. Bishops one of the three Estates Whall the Realms of Christian Europe. And how Try came to be advanc'd to that dignity and trust. e convenience of their not being divided in a the ruded from that dignity no more than the Goaws rument can be chang'd, which no Law can do. de a Bishops of the twelve Peers of France, and Reir Aristocratical Power. That all Govern-akints are Lawful that are Lawfully establish'd. eser Chap. XV. William the Conquerour agreeable bei

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der Tenure by Baronies, and all Baronies at the fontime feudal, with the reason of his Policy and age inconvenience it produced. Of the Curia Rewhich consisted of the Baronage, in which the pitalis Justitiarius Angliæ did preside. Of the ministration of Justice in that time. And the Baronage of England upon special Writh Summons became a Parliament.

Summons became a Parliament.

Chap. XVI. An account how all our preent, Courts derived out of the Curia Regis. That Et Ancient Court of the Marshalsea, or of the Vesho is abolished on antiquated. Of the Court of the High Steward. And of the Court of Chancery, lift the reason of its rise and growth, and how in Court it is.

Chap. XVII. How we recovered out of inconveniencies of that Constitution of Parliam en which was made up of the Baronage at that I lo By representatives in the time of H. 3. appoin all to be Chosen for Counties. And that this (it be allowed) can give no countenance to those that are desirous to change our present and better Constitution. That in all this Change the Bishops suffins no diminution. But when the ancient reason of ronage failed, they are after to be considered and der the new reason of Baronage. Of the Baronagers & minores, and the Barones Regis and Regni, King John's Great Charter explain possible and Mr. Selden's Arguments for placing Change of our Parliamentary Constitution in M. John's time answered.

Chap. XVIII. The remembrance of the old the son of Baronage became a prejudice in the d Iges, upon which T. Furnival Plea allowed, Ret he held not per Baroniam. An Entail of be Nobility changed, and no man now Noble by Acres. Many men Summoned to Parliament, it d yet not Noble. No prejudice to the immova-Right of Bishops to have Summons to Parlia-result, and that objection answered. Kings may at it new successive Nobility in Clergy-men. That Ve shops are of a distinct sort of Nobility, and unof r that and other reasons they are considered as y, distinct State.

chap. XIX. Of the three States which make e Government under the King, that he is none of em. The Objections against this answered. And me reasons of their being distinct, and the seveoin ake them so.

be That the several Orders of Peers make but one at aronage, and in that there is a great Trust, and nst mour greater belongs to Bishops than Lay Baof ad Qualifications commend them to the highest ed sust, and render them sittest Judges.

ard Chap. XX. The reason of Tryals per Pares, giand that the Bishops are competent tryers of Peers, ponthat reason in Parliament, though not so fit to be of the High Stewards Court. The Law of M. Charta not Lex scripta. Bishops ought to be Ch

Tryed

Tryed by their Peers. How that Right came Cl be discontinued, and that in Parliament ting cing

ought still to be Tryed by their Peers.

Chap. XXI. The unreasonableness of mession taining an Opinion upon a fingle Objection aga ops a matter evidently proved, that Questions of nature should be considered with Candor, and les. opposed with meer possibilities.

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itt Chap. XXII. Several alterations in the vernment fince the Conquest, that the Alterat in what concerns the Baronage, the Bishops Rison, is to be considered in analogy to the Change.

pru That changes of Government for the better of not again by altered, but our zeal is required ave defend the Government made better, and they Serve ill that go about to reduce us to our old a chiefs by their Antiquity.

ave Chap. XXIII. The advantage of the Change the constitution of our Parliament, in the cha of granting Subsidies. And how the Lords

bound by a Bill of Aids.

Chap. XXIV. The beneficial Change that he been made by the clause præmunientes in the Shops Writs of Summons to Parliament, wh gives Authority for the Convocation. By this are discharged of Provincial Councils, and the nons of the Church kept distinct from Laws of State. The Church kept in Peace from rend Questions, and Religion is conducted not by L. but by Canons, not force but perswasion, whi commends our Episcopal Government. Cha

me Chap. XXV. The danger we avoided of bating our Baronage of England ambulatory, and cing of it in Families and an indefectible Sucm fion, in which the Right of the Peerage of Bi-

ga ops is established.

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of Chap. XXVI. The Advantages the Adversaes seek to their cause by aspersing the Bishops. emembrance of all the faults in all times comitted by any of the Order, that many of those ratults are principally due to the Papal Usurpa-Rison, and the neglect of Kings to defend the Rights their own Bishops, and are all the Vitia Tem-

corum the times of Popery.

Chap. XXVII. How inculpably our Bishops ey ave been in administration of their Ecclesiastical suthority, how faithful in their Temporal Trust, nd Afferters of the Rights of the People. They ave not been irreverent to Kings, nor have they ha reroached any Power in Civil matters in ordine is a spiritualia. That the Power that they challenge meerly Spiritual, and they challenge nothing of phich they cannot lay aside. Mr. Selden's Argu-ne phich they cannot lay aside. Mr. Selden's Argu-ne pents for Erastianism answered. The Church of ngland doth not tye her self always to think and mjoyn as she doth at present. The moderation of f i be Church in Opinions, her apprehensions of Schism ust and great.

They are not answerable for the ejectment of the Non-conformists, nor for the scandalous Lives of heir Clerks, nor their Chancellors, nor abuse of

Excom-

Excommunications. Why matters of Incontine are committed to their censures. They have excised the Power of the Keys against the Infratof M. Charta, and how it bath been guarded the denunciations of the Church; we have reto expect as much from our Bishops to support

Government of Laws.

Chap. XXVII. There is as much reason to the Protestant Bishops should be as constant whe Reformed Religion, as Popish Bishops of nate for Popery. An Apology for their Unimity in Voting. Their dependance not so grupon the Crown, as to oblige them to disserve the Prince. The King bestows nothing upon them what is the Churches, the great expectation Government hath of their sidelity and perform ces. That which advanced them must continue the great cause of our evil State at present; ou which we cannot recover but by an excellent Cleand a high esteem of them with the People.

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The Argument.

CHAP. I.

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of the Government is concerned, and the Right of a most principal constituent part, and that in a matter of the highest Trust, which if truly a Right, n be no more relinquished (as the Nature this Right is) than a trust can be betrayed, duty and a Right denyed to be paid and permed, or the Constitution of the Government langed.

For of such a Nature doth appear to be the Tight in pretence and Controversie, of the Lords the

the Bishops to have judgment in the House

Lords in Capital Causes.

ve For by their being made Barons, they ow their judgments in fuch Caufes as a service the King, at first by their Tenures in Barona and though fince they are become Barones Scriptitii, or Barons by Writ, their duty is And besides, the Cognisance of sumi Causes became their own Right, being a partille and belonging to the dignity and office of a Ly ron. And it likewise became an appointment rec the Government, in which the whole Comment nity have their Interest, which is principaleg provided for and procured in all Governmen nt whose greatest concern it is to have Justice de w against all Criminals; and to have great aign wife, just and good men in the Administration of Justice, and other great offices of the C HIME vernment.

The people of England did anciently und acl stand the benefit of this Constitution, when to thing but the Baronage of England, the Louit Spiritual and Temporal, could refift the Torron, of Arbitrary Government. And it may be earne understood too, that nothing but the Boot nage of England is able to support the Thre lin For that Monarchy, unless so supported, is able weakest and most precarious and dependent set of vernment in the World, except it be support of with an Army, and turned into a Tyranny. This is the Throne should be established by Natural eyo

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entle provisions, and the Government fixed is

very mans greatest interest.

If the Lords Temporal had more under comand, and a larger Potestas subendi; yet the Lords
biritual out-did them Authoritate suadendi, and
ad more voluntary obedience. The Lords Spiual have several Advantages as they are Novi
mines, men chosen out of Thousands for an extellent Character and Spirit, and need not want
y accomplishments, if duely chosen and pretred, for the discharge of the greatest Provintred, for the discharge of the greatest Provin-

Cause doth appear probably belonging to Bishops; and it so, that they cannot, without and ach of their duty that they owe to all the sits of the Government and the whole Commity, depart from it; it may surely be insisted on n, disputed and maintained by them without ea me or imputation. But so unhappily it out, that the very disputing and controlling of this Matter by reason of the unseasis ableness of the dispute, and the delays that in the thereby given to the most important business of the Nation, to the great hazard as some of the Nation, to the great hazard as some of the summ of Assars, was very mistral evous to the publick. And now both parties

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are charging one another with all the mischie and the delays, that this Controversie hath gives to publick proceeding, or can with any probability be thought to have occasioned. And the et are not men wanting, on either side within do iv and without, that are forward enough to chance the blame of all those mischiess as deserved as their opposite party, which may eventualing

happen hereupon.

Who fees not how fatal this Controversi us like to prove to one or other of the Litigants, and to the Government in consequence, if this Can P cannot be duly heard and confidered, and her determined upon its own Merits, without up our Censures and Reslections on either side? Sincon last the contenders at mselves must be really judges, and give Judgment in the Cause, oon can never be quieted and have an end. Ind fure, Passion is no equal Judge and Arbiter, is men angred and provoked have not the sublifentiments of the same things, as when calm reference. And because there is no common Judge the start of the same things. ture, it ought to be considered by both pand with all equality of judgment and an exact peir dering and weighing of the reasons offered a le o ther side; for that otherwise it can never be spin decided, but must ever remain a Controver nine the immediate overthrow and destruction of Government, or over-ruled by force and P vhic of a most dangerous consequence in the cour of the time, to the Government; This will be a left of St

the five f the Axe to the very root of the Tree, it will be ut the Government it self into a State of War, the etween the several constituent parts of it, and lo ive an occasion for one part to usurp upon anomal ner, until the tone and frame of the Government become changed, and at last fall into the sine.

I am very well aware of the gravity of the rsi uestion and its importance, the high honour s, and regard that is due to the House of Commons Can Parliament, what commendations are due to nd nem in their persons, for their zeal and endea-un our by all means if it be possible, to save the Na-noon, Religion and Government: And what a e reat Capacity, that House in its very constituon, in the first designation of the Government, Ind by their mighty growth in power and inte-ir, if in the Course of time, have in procuring the ablick good, and that they cannot have any inmerest divided from the common Weal. I must pand satisfaction, I determine with my self, that a leir zeal for publick Justice against unpardonade offences in their judgment, and a prejudicate e pinion they had conceived of the Spiritual Lords er hindifferency (how duely will appear by and roy) gave the first occasion to this Question, p which was the true causa suasoria of their denyal out o the Bishops a Right of Session and Judgment that noble Question, Whether a Treason of State can be pardoned? And that put them

upon

upon the search of Precedents, an Oracle that will always give a Response agreeable to the Enquiras rer and Consulter. For I am sure there is a reasonable to the Enquiras results. thing so absurd and irregular, that rude Andm quity, and the miscarriages in humane Affai e be in length of time will not furnish a Precedent seen And these Precedents such as they were report lou (which we are hereafter to confider) by the ay diligent Members, became a causa justifica, ane I the matter in pretence to warrant their proces poings, that a great reason of State did seem sim ha them to require.

And now whether the Lords Spiritual can inde Judges in Capital Causes in Parliament is become

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a Question.

Though the Bishops Right to judge in Capi nov Causes in Parliament, seem to be clear and m w terially demonstrated from what is visible a im obvious, to the most vulgar observation of there knows how the Lords Spiritual and Lords Temporal are placed in the stile of Acts of Pen liament, and in the Heralds order in the Holfm of Lords.

The Arch-Bishops give first their Votes, et sic before Dukes; The Suffragan Diocesans at cate the Viscounts, and before the Barons: And rea the fame order did the Bishops stand in the putt lick Census in the times of the Saxons, as me the be feen in Sir Henry Spelman his Glossary int le i

word Alderman.

The great Authority, Power and Rule, that vas intended the Prelates should have in all the reat concernments of the Kingdom that were make the business of the House of Lords, may be best understood from the high place that hath freen always allotted to their Order in that rt louse; for Publick and Civil Honours are alhe ays apportion'd and adjusted to the dignity of are Ministries, Offices, and Services, that are to ee e performed to the Government. Such a folz-in sime was never enacted by an Order of State, hat those persons that were less in Power, and n nder abatement and restraint of Authority, of ould be preserved to those in place, that had enary power in the same Courts. It is well pi nown too, That the Arch-Bishop of Canterbuwas originally honoured with the first Writ of a immons to Parliament. Since the Conquest there never was an English Bishop, that had not bo s several Writ of Summons to Parliament; hough the number of Temporal Barons hath pen reduced, and many of the Regular Barons Io smift of that honour, for that their office was othing in the Church, and nothing but the poset sions of the Abbots, preferred them to that af tate. Nothing seems too big or too high for so nd reat and publick a character of the Bishops, or ut of the intendment of their trust, that can ever the business of a Parliament. The greater in the matters are that are agitated there, the more ecessary is the assistance of the Bishops; for he C 4

that in any affair is most trusted, is to be me e R concerned, and by how much the affairs in a of greatest moment, in the same proportion the are more strictly obliged and required to a linty

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in the management thereof.

We all know what fort of criminal profect at hons those are, that are made in Parliament, a e C what great confideration they are of: That the eter are always the symptoms of a very fickly Stat pr and the refults of very great disorders in the Common-Wealth. In these Cases, if in an receive the Lords Spiritual cannot be wanted: The nessed lecting to interpose in any one single prosecution that is Parliamentary, hath proved the occasionte That their Right of Session is now brought it y requestion. For to speak the truth, it is not ve test consistent with the Reverence that is natural I fi due to the Prelates, to think that a Trust anth Authority of fo high a nature, should be conghi mitted to them, and they should at any time in find reasons to neglect it. But for what on his fions they have been guilty of (though upon dge general confideration without examining trgin particular Causes and Reasons, men not friend to their Order, may thus censure them) in shall make a fair Apology as we shall meet what them, and as they fall in to be considered in the ge Discourse.

ppo We were now to give some account, here this comes now to be a question, for the verere questioning thereof makes some prejudice again den e Right; and there is scarce any thing so cerin and true in Nature, but if once put under fpute, that can recover again into a general cerinty and assurance.

It hath scarce escaped any mans observation,

at hath been acquainted with the business of a e Courts of Law, That the greatness of the the etender, and the value of the Interest and Right pretence, doth cause a point of Law to be tantended, which would never else have been an rred, especially if the Right be invidiously posne fled by another. Besides these three conside-titions, which are foreign to the true Right, I the otest there is nothing to my apprehension of in y moment offered in Print to continue it a ve restion.

ral I find two Books Printed upon this Question, at th of them tending to difgrace the Bishops of ght of judging in capital Causes in Parliament. tin ne in Octavo, called A Letter of a Gentleman om his Friend, shewing the Bishops are not to be on dges in Parliament, in Cases Capital. He tigins with a Preface containing some matters and dreasons against Bishops intermedling at in secular affairs; and after that, he tells us, what the Law of Parliament is best declared by the ge, gives us several Precedents, wherein he proses the Bishops absent; and concludes they heere so for want of Right and Authority to be velere. And to give some Authority to his Preaindents of omission (as he would have them)

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He tells us of the Affize of Clarendon, an Adle c Parliament made 10 Hen. 2. that excluded Bishops in such Causes; and of a Protestat made by all the Bishops in the 11 R. 2. wh by they renounce all Judgment of Right in f Causes, upon the obligation they were under the Canon Law: and to render it impossible, the should have any such Right, and to make the incompetent Judges, he adventures to fay prove after his manner, That the Bishops not Peers; and to prepare the way for their move out of that House, he adventures to brow an opinion, That the Bishops are not one of three States, nor an Essential part of the vernment.

There is another Book in Folio, called hic Discourse of the Peerage and Jurisdiction of le Lords Spiritual in Parliament. This Author pro fues the same design, upon the same ground deswith some peculiar reasonings of his own. ve therein I give him satisfaction in what not hath peculiar, without mentioning distincir ly of them, I am fure he will thank me ling

act But we will consider the Octavo's Presa dge examine his Precedents, and shew that they on. either not against us, or for us. And all alood observe the candor and integrity of the Author.
We shall further shew how absurd his Real ightings are to make those Precedents to conclude she any thing for his purpose. We will also weers e clearest demonstration prove, That the Asthe of Clarendon establishes the Bishops Autho-y and right to judge in capital Causes in Par-ment: And likewise, that the protestation ade by the Bishops 11 R. 2. is a most solemn ecognition of their Right; That the Bishops we sate in Judgment in the greatest Capital houses in Parliament that ever happened; That is their Authority hath been exercised in their is their Authority hath been exercised in their yn Persons, and by their Proxies, and recogized by Parliaments, and other great Courts Judicature; but never before this time ought into Question: That no Canon could sent the Right, at most it is but a Councel for in middle of their Authority. ed hich they might observe as they please: That the Popes Canon Law was never received to England, that prohibits Bishops to un dge in Capital Causes: That the Bishops ve declined to assist in pronouncing the Sen-at ace of Death sometimes, as undecent for tin eir Order; but notwithstanding, and without e ing contrary to the pretended example and ractice of their Predecessors, the Bishops may efa dge upon the Plea of the Earl of Da by's Par-ey on. For that if they do judge the Pardon not allowed, the Earl is not therefore to be condemn-orth. And for the better clearing the Bishops earlight, and for the establishing the Government, and the spiritual Lords are weers of the Realm, and one of the three States, and an essential part of the Government, whom on legal power can change or alter. Lastly, lerg shall repel the calumnies of the Adversaria which they endeavour to reas, the Prelates unworthy of their Right, and put them amongst the prodigi of furiosi, that use scarce allowed to be Proprietors of their or east And conclude our Discourse with a just Apole out for the Lords the Bishops.

CHAP. II.

That he will not meddle with the General of the Introduction to his Precedents fairly That he will not meddle with the General of the Manager of the Introduction to his Precedents fairly That he will not meddle with the General of the Introduction, How far forth Clergy-men in Orders have forbidden having any thing to do with feel was all Law requires, as that Rescript of the Emission of the Emis

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ded a special Writ in the Register upon occawhon of a Master of an Hospital being it seems a y lergy-man, and chosen an Officer in a Mannor, which that Hospital did belong, saying, it as, Contra Legem & consuetudinem Regni, & no n consonum; It was contrary to the Law and at ustom of the Kingdom, and not agreeable to eason, That he who had Cure of Souls, and old ould spend his time in Prayer, and Church-dues, should be made to attend upon Secular imoyments. I meddle not neither, saith he, with hat feems to be the Divine Law, as having een the practice of the Apostles, and by them eclared to be grounded upon reason, and to be what in reason ought to be; which was this, id that they should not leave the word of God and fairve Tables, though that was a Church Office; Ond yet they fay it is not reason they should do re hat, for their work was the Ministry of the ect Vord and Prayer, much less then were they to np e employed in secular affairs. This with great kill he prefixes to his precedents (which make st he Law of Parliament, which is the Law of the and he faith) and after he had faid all that he co could to make the very pretence it felf unlawful, at and to perswade the shutting of the Bishops out as of the House for altogether, he subjoyns his Pre-in redents: He thought certainly that when he had in placed the Precedents in such a light, they must la look all of that colour, and have that appearance, aw which he endeavours by other Arts to give them.

But

But we shall spoil his design in a very ight words, which the observant Reader will appeir hend, how pertinent it is, and satisfactory stim what is objected in the recited Presace, the ta J we do not for brevity sake apply our Answeinter

every particular of his Discourse.

We say therefore we can't think the Clemes fit for Proctors, Publick Notaries and Scriven It wor Ushers of Court, or other subservient office. nor fit to make Constables, Tythingmen, burt Scavengers; nor to keep Watch and Ward, ight to be a Hayward or Bayliff of his Worships M ned nors and Townships: Or that they should tus Merchants or Farmers, or interpose in his Secular Affairs for gain: That it was decle un by the Pastors and Teachers of the Chur Bu as an indignity for them to administer to hem bles, i. e. to the Provisions of Charity ent their Church-feast, and they ought to ke no far off from a suspicion of filthy Lucre; a Bu not to Preach Principally for gain, or make the gain of Godlines: By the Imperial Law accordingly, they were discharged from the trouble for being Tutors and Curators of Orphans; in second where the Law had defigned them that care and their relation to the Orphans, out of respect on their dignity they were discharged by the Law that they might not incur unkindness in the program of the Dallie of th neglect of their Relations, nor yet be incumber fer with such private attendances to divert the ca from their great Cure. Though the Presbyter far mightat ght be admitted ad Tutelam Legitimam by appeir own consent, and this was made Law by stinian, Cod. L. i. By which Law it appears that ta Judgment of Incompetency in Clergy-men, intermedle in Secular affairs; but an honoura-exemption of the Bishops from such private the neernments, was the reason of that Law. It was further provided by a Law of Justinian, and L. I. That Priests should not be made of ourt-Officers, but those that were so made ght continue, the reason of the Law is consent in it; because that such a man was Eunch two in Executionibus vehementibus seu asperius his quæ ex ea re accidunt peccatis. Non utique his quæ ex ea re accidunt peccatis. Non utique aum fuerit modo quidem Sillico esse Taxeotam ar Buleutam & facere omnium acerbissima; mox tem Sacerdotem ordinari, & humanitate & interestiva exponentem dogmata. In all this the ke nour of the Church was consulted.

But business of weight and trust was conse

But business of weight and trust was comthe ted to them: Valent. Valens appointed Bico ps to set the price of goods sold with this
ble son, Negotiatores ne modum mercandi videantur
ne tedere, Episcopi Christiani quibus verus cultus
e adjuvare pauperes, provideant. Justin. 79. Novel,
co pmits Monks to the Jurisdiction of Bishops,
well 83. he decrees the like for Clerks, as well
to matters Civil, as for Ecclesiastical Crimes,
bus serving others to his Officers; and surthermore,
has case the Bishops cannot or will not take cogter sance of them, he refers them to his Magiightates.

Nay,

Nay, the Emperours proceeded further; did give Jurisdiction to Bishops, not only mem Clerks, but also over Laymen. Constantine ride Great (whose Law the Canonists ascribe Ass Theodosus) made a very favourable constitutes C in behalf of Bishops; whereupon he gives to d g the Cognisance of all Civil Causes betwixt L to men, upon the bare demand of one of the lord ties, albeit the other did not consent unto it in fuch fort as the Magistrates are bound to de O from the Cognisance of it, as soon as one of The parties shall require to be dismist and sent thit e R whether it be at the beginning, or middle, or give of the fuit.

Arcadius and Honorius derogating from earr Law, will have it to be by the joynt connot of both parties, and that by way of A ha it (trement.

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The fame Emperours together with The an fins do ordain, That there shall be no appeal fror, the Episcopal Judgment, and that their ne, tence shall be put in execution by the Serjer for and Officers of the Judges. em

The two last, Justinian would have to be dig served; for as for that of Constantine, he did ay insert it in his Books, which Gratian hath ous fest in his decrees: And whereas in the Codent Theodosius, the inscription of the Title runs that De Episcopali Judicio; Justinian instead of itheds put De Episcopali Audientia, to shew that it is 19 properly any Jurisdiction that is bestowed with thejul em but a friendly and arbitrary composition to

eridge process.

After this the Emperour Charles the Great in a Capitulary renewed the Law of Constantine, and gave the same Jurisdiction therein contained to all the Bishops, repeating the same Law, a lord for word; which the Popes have not fortit in their Decrees, where they have inserted the Constitution of Constantine under the name of Theodosius, just as Justinian did in his Books, it is Responses and Commentaries of Lawyers

or give them the strength of a Law.

But I know there is a Question made by very arned men, Whether that Law of Constantine on not supposititious? But whether it be or be not, At have alledged enough without it to prove at Christian Emperors, and the ancient Christian Church was not of the opinion of this Audit or, and that his Citations insomuch as they are it e, are nothing to his purpose; The cause or ries son of those two Laws expressed in the Laws emselves are, For that the Authority of Sacred ligion invents and finds out many means of did aying Suits, which the Tyes and Forms of caphous Pleadings will not admit of; That the Judgeonts of Bushops are true and uncorrupted; at this is the choaking of those malicious it as of Suits; To the intent that poor men intended in the long and lasting snares of tedious those, may see how to put a speedy end to those the just demands which were proposed to them.

But the Pope his Decretals, the Court of Road and other Ecclesiastical Courts are of old coplained of, as the source of Iniquity and injust S and of all the thufflings and tricks that could be invented in matter of pleading, all Papal Christendom hath groaned miser in under them; I wish that we may never hour duly of any fuch complaints of our Eccles cal Courts.

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It is worth observing how the Church Common-wealth did Actions contrary to aft other in pursuance of their several Inter The Common-wealth endeavoured to en Bishops in the highest secular affairs, and their Supream Judicatures, and so the Pe would have it, not doubting of fuch admier strations as they might fairly expect from s Bishops Ability, Authority and Religion. Pr on the other fide the Church did as much ure cline them as she could, and so far as she migror she used her Restraint only in prohibiting the from medling for their own private gain appropriate affairs. Can. 14. Arles, Cleration turpus lucri gratia aliquod genus negotii non bramittat: But did not take from them all op Satunities both of doing good to their Petere and fecuring the Secular Power (of wibu they became part) to their own assistance, dir without restraining their Services to the Pricul when required. dit From which practice of the Church, the pri ok advantage to put his peremptory restraints on the Bishops and Clergy from intermedling Secular affairs to make them the more submittant dand dependent upon himself, the better to live to his Ecclesiastical Monarchy. The Digies and favours that Bishops received at the burts of Princes was the envy of the Pope, and matter of quarrel against them. Petrus esensis, upon such an occasion makes an ology to Pope Alexander the Third, in an offile writ in the Name of the Arch-Bishop of aterbury, in defence of the Bishops of Ely, or cester and Norwich, who attended then at urt upon the service of the King: which before the hath been an Author produced by the difference in this Cause, and because what he is for their being admitted into the Councels Princes contains so many advantages to the arch and State. I shall here transcribe: None ich urch and State, I shall here transcribe; Non mit sovum quod Regum Conciliis intersint Episcopi, tenim honestate sapientia cæteros antecedunt, sain expeditiores se essicaciores in Reipub. adminitione censentur; quia sicut scriptum est (minus non briter disponitur regnum, quod non regitur conop Sapientum) in quo notatur eos consiliis regum Perere assistere qui sciant & velint & possint pati-Wibus compati, terræ ac populi saluti prospicere, ice, dire ad justitiam Reges, imminentibus occursare e Priculis, vitæque maturioris exemplis informare ditos, & quadam Authoritate potestativà præhelinptionem malignantium cohibere: He proceeds

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in his discourse, and brings the examples of muel, Isaiah, Elisha, Jehoiada, Zachary, who Priests and Prophets respectively, & yet im ed in Princes Courts, and Councels of Kings adds, Unum noveritis quia nisi familiares & c liarii Regis essent Episcopi supra dorsum Ecc hodie fabricarent peccatores, & immaniter & tolerabiliter opprimeret Clerum presumptiol lis: then he adds advantages to Religion Policy hereby, Istis mediantibus mansuescit simplices judiciarius rigor admittitur clamor perum, Ecclesiarum Dignitas erigitur, relev pauperum indigentia, firmatur in Clero lib pax in populis, justitia liberè exercetur, sup opprimitur, augetur laicorum devotio, religi vetur, diriguntur judicia.

It is well known (and I will not be so in tinent as to go about to prove) that the Ministers of Religion have been the greatest in Civil Government in all Nations, and in Religions as well as in ours; and as certain nic this Author will never find reason or precedio of Authority or weight enough to perswad contrary, or an alteration therein: notwith ing that complaint which he tells us was ey in the 45 of E. 3. by the two Houses, Complete in the 45 of E. 3. by the two Houses, Complete in the 45 of E. 3. by the two Houses, Complete in the 45 of E. 3. by the two Houses, Complete in the 45 of E. 3. by the two Houses, Complete in the 45 of E. 3. by the two Houses, Complete in the 45 of E. 3. by the two Houses, Complete in the 45 of E. 3. by the two Houses, Complete in the 45 of E. 3. by the two Houses, Complete in the 45 of E. 3. by the two Houses, Complete in the 45 of E. 3. by the two Houses, Complete in the 45 of E. 3. by the two Houses, Complete in the 45 of E. 3. by the two Houses, Complete in the 45 of E. 3. by the two Houses, Complete in the 45 of E. 3. by the two Houses, Complete in the 45 of E. 3. by the two Houses, Complete in the 45 of E. 3. by the two Houses, Complete in the 45 of E. 3. by the two Houses, Complete in the 45 of E. 3. by the two Houses in the 45 of E. 3. by the two Houses in the 45 of E. 3. by the two Houses in the 45 of E. 3. by the two Houses in the 45 of E. 3. by the two Houses in the 45 of E. 3. by the two Houses in the 45 of E. 3. by the two Houses in the 45 of E. 3. by the two Houses in the 45 of E. 3. by the two Houses in the 45 of E. 3. by the two Houses in the 45 of E. 3. by the two Houses in the 45 of E. 3. by the two Houses in the 45 of E. 3. by the two Houses in the 45 of E. 3. by the two House in the 45 of E. 3. by the 45 of Barons, and Commons to the King, how me Government of the Kingdom had been a thet time in the hands of the Clergy; Per cet & low mischiefs & dammages sont avenuz en temps & pluis purroit eschueren temps avenir, al dif

n de la Coronne & grant prejudice du Royalme: of hereby great mischiefs and damages have hapned in times past, and more may fall out in ne to come to the disherison of the Crown, and eat prejudice to the Realm. And therefore by humbly pray the King that he would emby Lay-men; This they had too much reason desire then, when the Pope had advanced his thority over the Clergy, and put them under this of Canonical Obedience, which rendred em less fit to be intrusted in the Government of s Kingdom, for that thereby they were become bjects of another Empire, usurping continually on us; which will never be our Case again if e Bishops can help it.

CHAP. III.

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ND now we proceed to the Freedom, which the Octavo Book principally confifts, ND now we proceed to the Precedents, of which feem, as that Author and the other in lie would have it, to be not only a discontinuad ce of the Right of the Bishops to judge in Cahi tal Causes, but an argumentative proof that as they never had any; because it can as they say never proved to be otherwise. Immemorial now me I confess is a great evidence of the right, a thether In non user or user, and a fair reason to slow or deny the pretence; and therefore we will

will now confider the Precedents: As for the ill gumentative and discursive parts of those booms they will fall in to be answered by way of the e jection, when we are discoursing and proceed the affirmative part of the Question, and hic best be reproved by being placed near the list a of our Reasons for establishing the Right of spu

If we do not give some satisfaction to the nd Precedents, whatever we shall say, I know essenting in the same of t stified by unexceptionable witnesses; for todes the Precedents will be taken until except bar are made to their Testimony. ings

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The Precedents produced by the two Authore are mostly the same, only the Octavo hath meat

The first case that the Ostavo produceth owe gainst the Lords Spiritual, their Right of be ent Judges in Parliament in Capital Causes, is theat of Roger Mortimer Farl of March. of Roger Mortimer Earl of March, Simon Bernity ford, and others (who were no Peers) and every tryed in Parliament, and no Bishops preserves and we agree it probable for his reason, becamp there is mention made of Counts, Barons, Si Peers; Peers, being named after Barons, common not comprehend the Bishops. Because whethink it reasonable, when the orders of the significant comprehends are supported by the second se House are particularly enumerated, that the hou der omitted should be intended absent; but vere

he ill not allow but that Peers is, and so is Grants omprehensive of Bishops: Nor will we when for entry is General intend the Bishops absent, cept he can otherwise prove them absent hich we mention in the entry once for all, as it and common measures between us in this of spute. It will appear true what we affirm of e words, *Peers* and *Grants*, by what follows:
that if we should not insist upon their being
we fent, when nothing appears to the contrary,
or e should do wrong to the Cause.

But to come to the consideration of this Predent: Is this a just Precedent? Is not Magna barta hereby violated? Are not the proceedings altogether illegal? Here are Commoners the yed by Peers in Parliament. It is well known, me at the high displeasure of the King was concern-, and that he did interpose with a plenitude of thower in this particular case against the fundabei ental constitutions of the Government; the eatest crime of this Earl was too much samili-Sen ity with the Kings Mother, Indignation and dy evenge, and not Justice, formed the Process; It se as proceeded to condemn him Judicio Zeli, up-

can pretence of the Notoriety of the Fact. Sir Robert Cotton in his abridgment tells us no 4 Ed. 3. That the King charged the Peers who as Judges of the Land, by the Kings affent diudged) that the said Roger as a Traytor ehould be drawn and hanged. The Bishops

twere not present, certainly they were none of the D 4

Judges that gave Judgment as the King poper nounced without Cognisance of the Cause; Teeth King had more Honour for their Order, that Parl call them to fuch Drudgery and Service of the Crown: The iniquity of the sentence appearrage the reversal thereof in Parliament, 25 Ed. 3 arly which the Original Record is recited: Sir Ros tr Cotton in his Abridgment tells us, That men Earl being condemned of certain points whe d the he deserved commendation, and for other a son gether untrue surmises, there was a s w brought into the Lords House for the reverleess the Judgment, and it was reverst by Act of E in liament; indeed it could not be otherway oyal verst: for no Court can Judicially reverse vaich verst: for no Court can Judicially reverse mich own Judgment for Error in Law: and a Judgment in the Lords House, (being the dernier Reseased in the Lords House, (being the dernier Reseased in the Lords House, (being the dernier Reseased in the repealed, but undone it may be been themselves in their legislative Capacity. It is made to be excluded in the Bishops were not present that the passing of that Bill, but yet the Od yas Gentleman will not pretend that the Bishops the control of the excluded in any Acts of Legislation. We can therefore was he so willing to impose upon the People so falsely, and unrighteously, and see the Right of Session in matters of that Nature, and the Right of Session in matters of that Nature, and the Right of Session in matters of that Nature, and the Right of Session in matters of that Nature, and the Right of Session in matters of that Nature, and the Right of Session in matters of that Nature, and the Right of Session in matters of that Nature, and the Right of Session in matters of that Nature, and the Right of Session in matters of that Nature, and the Right of Session in matters of that Nature, and the Right of Session in matters of that Nature, and the Right of Session in matters of that Nature, and the Right of Session in matters of that Nature, and the Right of Session in matters of that Nature, and the Right of Session in matters of that Nature, and the Right of Session in matters of that Nature, and the Right of Session in matters of that Nature, are the Right of Session in matters of the Right of Session in the Right of Ses himself recognized? There is nothing can exten: him herein, for he is certainly felf-condemne hic at i undue Art in this matter.

In 20 R.z. the Case of Sir Thomas Harind

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ppen'd, which the Octavo book (page 20) prois Teeth against us. He was for sooth condemned a Parliament, for that he had preferred a Bill of the House of Commons, for regulating the a tragious Expences of the Kings House, partialarly of Bishops and Ladies. Haxey was for stryed, and condemned to death for it in Parattenent. And here appears to be no Bishops, hed there ought not to have been any for these reasons. First, that the Bishops were the par-as wronged, and therefore could not in any theres give sentence; But Secondly, if that was set in the Case) that that caus'd the process was y yal anger upon a great faction of State, (in which I believe the Bishops were engaged) go de for deposing of Rich. the 2d. that was unfiftood by the King to be in acting, and probe beed by Sir Thomas Haxey by his Bill. It was His made the sentence altogether abhorrent from al Justice in matter and form. Here was a of yal of a Commoner by Peers, a matter made ps eason, that did participate nothing of the na-tre of Treason. But the discreet Gentleman Il take notice of nothing that is faulty in this of the proceeding tends to abridge iffeedom of speech in Parliament, which he but in the first of Hen. 4. this Judgment of At-Heinder was repealed and annull'd, as he himself tells

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tells us, Fol. 25. And here the Lords Spir ts of were Judges, which must be remark't for avin honour of their Order, that though they be the pars læsa, by that fault, such as it was notwithstanding they concurred readily t so t hav

repealing the Judgment.

But by this it appears that the Bishop Cat agreeable to their rightful Authority, give Judgment in Parliament in Capital Causes; our therefore in consequence, because it is a Centl his own production, he ought to allow the sits Bishops might have had Session in the its peal of the Attainder of Roger Earl of Mats. if it had been, or could have been rep The by Judgment, or a Judicial Act of the at w House. bre

For will this renownedly wife-man, for a gdo ing of this his own testimony which he et justly produced (though it proves to te lot against himself) say, that the Bishops can bin present at repealing of a Judgment of Conda nation, but not present at confirming any? Te

Doth not it, in this proceeding come be reathern in Judgment, and confideration, When of the fentence shall be repealed or affirmed, at appears not this with a witness, a question of Blood? lian Judgment being upon an appeal or review me be final, peremptory and decretory, and is most question of blood, than the Cause can be red ing ed and deem'd to be upon the first Instaurce Or doth he think fit that there should be ar I ts of Judges appointed, a hanging Judge, and a wing Judge; if he doth, I am fure he will be able to find an employment for a just ge.

So that, I think, to all men that can consider, have sufficiently vacated that testimony, that Cases of the Earl March and Haxey's seem'd give against us, and they are fairly come over our side. And we have provided herein sufferency against the Prejudices, this Octavo its great Esteem hath done to their Judg-In the Third Precedent is, 15 E. 3. That Parliation was declared to be called for the Redress of

breach of the Laws, and of the Peace of the angdom, and as the Octavo hath it, Fol. 8. bethe ethe Prelates were of opinion, that it belong-te ot properly to them to give Councel about caping the Peace, nor punishing such evils; nd went away by themselves, and returned no ? re (faith he) but that is out of the Record, be ready this Author in Octavo is to shut them he of the House; but I pray would not the ar apporal Lords, if the King had consulted the le liament in matters Ecclesiastical, have in manner departed, but would fuch depar-of the Temporal Lords exclude them from eding any thing to do in the Affairs of the faurch; Why then are the Bishops treated in e ar Right fo unequally?

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And this must serve for an Answer to Folio, p. 17. where he is very large in rec ull Records of process, and Proclamation against Earl of Northumberland, agreed only by I If a Liturgy, or book of Canons were established by Law, the Bishops certainly The Octavo have the forming of them. that Commissions were then framed by Counts, Barons, and other Grants, and bro into Parliament, but no Bishop was presen much as to hear the Commissions read; be they were for enquiring into all Crimes, a Capital, as others. And for affirming this all that can appear to us) he only confult Will and Pleasure, like an honest man cause he defends, for he hath not told us any Record, what the Nature of these Con fions were. But we observe, that though this liament was called for matters of the Peace the Bishops had their Summons, and it wa a Parliament excluso Clero. The Bishops its upon the opening of the Parliament, and causes of convening, modestly, it seem'd, d red that they were not competent, as not haps studied in Pleas of the Crown, 10 haps had not been so observant of fact, if matters of grievance. What harm in all they that cannot propound may judge of En ents propounded, and so did they; for it appear by the Record, 6 E. 3. N. 3. tha Results of the Temporal Lords were apprelish in full Parliament, by the King, Bishops, Lords Commons, which the Folio agrees. But it ems modesty is a dangerous thing; and not to forward to judge and determine, though the tter be not understood, may be a good Cause by turn a Judge out of his Office, and forfeit his licature. Besides, the principal business of en s Parliament was Legislation, in which the may they not advise upon what they make that is to pass into a Law in all the kes? kes?

But it is admirable what the Folio Book faith, that by this Record it is evident that the ce that by this Record it is evident that the elates have no Judicial Power over any fonal Crimes, which are not Parliamentary fuppose he means Crimes not delated in Parment.) This doth very much fortifie the fountions and grounds of his Discourse. What are grounds of his Discourse, I shall never be able find out, except it be an over-weening Opinion himself to meddle with these matters which m too high for him; and to which the reading my Lord Cooks Institutes, and the broken ommentaries of the Law, will never render

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y man competent.
It's true the Bishops have never any Power and ognizance of any Causes, except they are Competent but as issionated thereto, out of Parliament, but as rue it is of the Temporal Lords; and therefore whatfoever

whatsoever advantage this will do his de of

with all my heart let him take it.

The next Case produced as a Precedent, by them, is the Case of Sir William de La 2 th and Sir John Gray, for a Quarrel in the in the presence they were both committed to blee Tower, and after brought into Parliament June t no

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Bishops there.

It is a Case that could not be Judged to wineither was it; but one of them was discharicated because no probable matter of offence as him, and the other remanded to the The Tho (I suppose) to be proceeded against as the required. Is this cause (I pray) to his put Have not the Prelates Judgment in Caul Trespass, that properly come before that H by his own Confession? And yet the Octav marks here, that no Bishops were prese Judge so much as of a Battery; though the cord warrants him to fay only an Assault. out of his great fincerity, and to make a cedent where he could not find one for hist he foists a Battery into the Case, ho that then the forward Reader would ply the rest, and smell Blood in the C which must be interdicted to a Bishops Co

But observe what an aking tooth he against the Bishops Right; for he could not have in his mind, what almost immedia re after, he writes down in his Octavo (viz.)

Ce of Sir John Lee, 24 E. 3. and of several peren t, by Bishops for misdemeanors. And he saith they might; which certainly together the Case of Michael de la Pool, 10 R. 2. he to bled himself to transcribe, to make a shew Number and false Musters, a sleight that t not pass upon the people, and a Stratagem t will never get him any advantage towards

ictory.

Thorpe, 50 E.3. as it lies in order in his k, because we thought it more expedite to mine those that spake to the same thing to-He of a Judgment of Death against him for a pery, was brought into Parliament, saith (e Octavo; in full Parliament, faith Sir Robert he on, and the King caused it to be read before Grants in Parnament. The because this was a Octavo) could not be there, because this was moleyment for them; and thus he proves his Grants in Parliament: The Bishops (faith le, it was so, because it was so. And for nt of proof concludes he hath a very good ch, that a full Parliament doth include Bi-ps; that the Bishops are truly Grants, and so the putting of the question. But we should be had a most famous Record of that story and onderful Accident.

The Cause of William de Weston and John th Gominits, 1 R.2. was for traiteroufly furrending Towns and Castles in Flanders to the Kings E en mies. And the question was, whether they have dthemselves well in their desence, and I therein like valiant and faithful Commande le Whether the Towns could be preserved age the strength of the Enemies that did attach the Indeed not a very proper question for a Bisho electronine: The Examination of the Charles and Defence was committed to several Lo Temporal, named in the Record; But it m be observed, though these Lords managed Cause, found the Towns upon Examination of necessity, but wilfully delivered, agreed what Judgment should be pronound against them: Yet observe, their Answers w put in full Parliament. When the Judgm was pronouncing, there was likewise sitting full Parliament, which the Octavo doth will ly omit. And the Record further faith, t they were brought before the Seigniors in Par ment, Friday the 27. of November, and ag before the faid Lords, Saturday the 28. of M That all this while in the Record, there is mention of the Names of any particular Long fo that we hear nothing yet in the Record, of a full Parliament, Seigniors in Parliament which are the most comprehensive terms, can, and do include Bishops, and strongly into them included. He that saith all, excepts not

oh, the Record faith, that when the Judgment was ndi to be pronounced, Les Seigniors dudit Parliament gs E estascavoir, and then names the Duke of Lanneyl after, Earls of Cambridge, March, Arundel, and Varwick, Stafford, Suffolk, Salisbury, Northum-ende perland, Lord Nevil and Clifford; and other against ords, Barons and Bannerets being then in Parament, had met and advised upon the matters the efore. These Lords agreed it seems the Judgnent for the whole House, and it was pronouned in full Parliament; and that in the Names
it ment and Authority of the whole Parliament. Pray ged it it be observed, that when the Record speaks nation Seigniors, in the first part of it, no Lords are amed, and so all intended; when afterwards he rs wer foresaid Lords, the Record saith avantdits, and no Lords named yet, so dgm hat all the Lords of Parliament are then likettin ise included: But when he names the Lords hat had advised, there is no avantdits, or aforewil id. Though the Octavo puts the avantdits, or 1, t he aforesaid to the named Lords, to the pur-Par ose, that it may seem, that no Lords were pred aga nt in this Cause before in Parliament, but those of N med and mentioned, amongst the which there e in ere no Bishops, against the Faith of the Record. Lor o the Record I appeal, Rot. Parl. 1 R. 2. rd, Mem. 5. amer

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The next is Sir Ralph Ferrers his Case, 4 R. 2. le was brought into Parliament, and there tryfor Treason, in holding intelligence with the

French.

French. The Entry is, It feem'd to the Lord w the Parliament, that the faid Sir Ralph was in a cent. This testimony too is argument ative; a argument ative; a reconcludes Bishops not there, because not expectly mentioned, as they were in Alice Pen the Case, 1 R.2. I never could have a good opin or of a cause, that hath nothing but argumental proofs, for this reason; because there are things possible than ever happen'd; but at me foning Witness is always accounted a will from Witness, and therefore a Witness suspected for An but most certain, a Witness with a reason he testimony is no better than his reason. But he must the Entries of the Clerks be so now bw weighed? Are they fo oracularly penned, from every iota of the Journal must comprehendal sir stery of State, and carry in it the very confirm tion of the Government? must that be such mor no other, than short or large Entries make thy Must a Criticism upon the Clerks form of I alter and refix the Government? must it ch and be ambulatory at the hafte or leafure fhort or more large Entry of the Clerk? ever any wife man, before this Criticifer, determine questions of the greatest moment ases on such trisling considerations? or suspendent most momentous concerns of a Nation, the adc Government it self, upon such a very se ime thread? But to leave no scope for such can ent tions, we will turn him to the Parl. Rolling 14 E. 3. Were not the Grants the Bishop wha

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well as the Temporal Lords? Are not both Bishops and Peers called Seigniors? Are not Seigniors and Grants of the same import? And as certainly this argumentative testimony makes no credit to the Cause, nor to the Author of the Octavo who

produc'd it.

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The next Case is of the Bishop of Norwich,

R. 2. who is brought to Judgment in Parliament, amongst other Ossences, for betraying fraveling to the French, which was Treason.

And this cause the Record saith, was heard before he Lords Temporal: And here I will agree that he Bishops were not present, but I will not al-by that they were excluded. And if that addi-, tion of Temporal had been to the Seigniors in al ir Ralph Ferrers Case, or to the Grants in ir Wil. Thorps, I would have allowed the Bi-ch nops in those Cases not present likewise. But ake thy I pray may it not be with as much fairness poncluded that the Bishops were present (beuse the addition of Temporal is not made to re eigniors and Grants) in the said Cases of r Ralph Ferrers, and Sir Wil. Thorpe; as it can that they were absent in the hearing of the faid ien ases, because the word Prelate or Bishop, is ot in those Entries expressed? If he will be just end the and change the Tables, He must yield us the Ar-The ment, for he knows that there is no establish-Car ent in the Modus tenendi Parliamentum, direing the Forms of Entries, or any solemnes for-Roll ulæ, whose import and value is ascertained hops

and made indisputable, but are to be expound Rig we make fair constructions in constructi herein guilty of that fallacy which they he he untilans is and in or non causa pro causa; he fte his Witness doth not speak ad dem. The Bill and was an Ecclesiastical person, and thought or Bishops might try a Temporal Lord for the se the offence, yet they would not consent to try all was shop, and forgo that great priviledge of the Characteristics. gy, with so much earnestness detended into ak Age, to be exempt from fecular Judicatures. The me would not be present to try, because of the ay person of the Desendant, which cannot aga drawn into Argument, to prove that the had no cognizance of the Cause, with ther fairness.

But further the Octavo doth afterwards p Wo duce a Testimony that doth contradict this is Testimony in the point for which he product ma It is the Case of Thomas Arundel Arch-Bill qui of Canterbury, 21 R. 2. The Bishops pronoun Judgment against him in Treason by the Proxy. They can it seems upon great Real wave that priviledge, and submit a great M factor of their own Order to Justice, as the did in the Case of Becket heretosore. So th you see here, they used a Jurisdiction in a Ca of Treason in the Case of Thomas Arundel, whi the Bishops could not have used without Right

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Right; And the Case of the Bishop of Norwich

What is only an omission consistent with a Right.

The Case of Sir William Rikehill is next in order, who was sent by R. 2. to Calais, to take the Consession of the Duke of Glocester, who soon A fter was Murdered. The Judge was arrested and brought into Parliament before the King, he ords Spiritual and Temporal and Commons; he whole matter was examined, and the Judge al was examined. Here is likewise a clear Case Of for the Bishops, an Instance wherein they did take cognizance of a Capital Cause in Parliament. But the Octavo hath a Shift for us, and ays that there was no impeachment or charge against the Judge, and that the Bishops might be present at his Examination. Let the Reader here observe the sleights, wriglings and prevariworld thinks of this Author, I am much dissasi isfyed about him, and cannot believe him a man indifferent and impartial in this Enquiry.

inc i In his observations of the Parliament of the 15 E. 3. the Bishops he saith vanished like lightning, they went away immediately at the opening. That matters of the Peace in general were to be treated of (wherein Blood and Member might not at all be concerned, for all that appears.) They went away and (as he would have hear so much as a Commission of the Peace read. it) they returned no more: and they must not

But here in this Case of Rikehill they may en I mine a Murder. He will fay (I am fure) the hat though the Bishops did examine it, they course make no judgment of the matter. But who believe him? In the Case of de la Zouch and Gra he observes that Bishops could not be present much as at a Battery, though there was no Robee tery in the Case, and yet he allows them judge of all misdemeanors in the same lin Book.

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I observe but these things, of many more like nature, which the Reader may observe himself, in that little Octavo; that the Wor may judge, how unjustly he deals in this Caule with what iniquity and prevarication he man ges a noble question of Right concerning the vernment of the Kingdom. With what petul cy, spight, and inveterate displeasure, he useth Bishops. That he is grinning at them, whetti his teeth, and squinting upon them perpetual with an evil Eye. He oppugns their Rig with Cavillations upon the Clerks Entries, w what is in the Record, and what is not, a what he is pleased to add of his own upon the and with Precedents that reprove one another Had it not been more fair for him to have flas the Right upon a probable refult of all the cords confidered together, than to make the Right fometimes more, fometimes less, som times to affirm, fometimes to deny their Right in the fame little Octavo?

He cannot fure think that every Judgment hat hath been given upon deliberation in the con reatest Judicature, can uncontroulably make the aw; much less a Fact, much less an Omission, Negative that can operate nothing. If nothing OW ent be Law but what hath always and constantly been done in the same manner and form, and all ircumstances the same, as this Author it seems vould have it; and nothing true Theology (acording to Vincentius Lirinensis his Rule) but ore what hath been received ab omnibus, ubique & semper, We can have no Law, nor no Theology. Vain and idle opinions must be discharged, such s can have no confideration with wife men: and the Law must be declared by the Nature of nan Government, reason, and the general order of But we have made too long an Excurfion, We must return to a further consideration of Rikehill his Case.

And now I submit it to any impartial man, whether the Judge could be arrested and brought under an Arrest into the Parliament, and be exa-

mined and not accused.

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The very next Case he recites is that of John Hall, in which we find nothing but an Examination and confessal; upon which he was condemned as a Traytor. And so would it have fared with Sir William Rikehill without doubt, if he had been guilty and had confessed. Neither the Octavo, nor Sir Robert Cotton mentions any formality more against the one than the other.

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The House of Lords are not tyed to Form Sin ties in their proceedings like other inferior July catures: and the more inferior any Court is, and I more regular forms are exacted, and with great reason, which we will not treat of. Besides, in the Case of the Earl ne Northumberland, recited in the Octavo Boo Fol. 34. in 5 H. 4. a Judgment was given ord gainst him for an offence upon a petition, wh he exhibited for a pardon of the same fence.

But in the Case of the Earl of Northumberlandi I pray observe what the Octavo saith in reference B to our question. After he hath recited part of the Record in these words; [The Petition being to reference of the Petition being the Petition being to reference of the Petition being the Petition and understood, the Lords as Peers of Park is ment, to whom such Judgment doth of Right appertain, did give their Judgment.] He and cludes that the Bishops could not be said to be at Peers, which shews they were not there. It is he must give us leave with much better Logicula to conclude, that they were present; and with reason presume, because they are Peer and Parliament (for so the Record is, not his Persum for he fallaciously changeth the Terms) the were there, except he can prove them absented common Right is not Reason of presumption, presumption can be reasonable. But we are prove to him they were there. And thereby consequence, we have another proof that the are Peers.

Sir Robert Cottons Abridgment tells us 5 H. 4. 1. 426. that at the same time the Arch-Bishops d Bishops, at their own request, (and therefore tainly then present) were purged from suspi-tion of Treason by the said Earl. And at the same ne, I pray observe, Sir Henry Piercy his levying

War was adjudged Treason by the King and Boo ven ords in full Parliament. Note, that here is faid be a full Parliament, and yet nothing in the try, but the stile of Lords. So various and ntingent in respect of form are the Entries;

rland hich ought to be observed.

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But to review and consider again the Case of eren of the hn Hall condemned in Parliament for Treason, great murdering the Duke of Glocester. And to Pall is place I have reserved the Case of the two Rie Terchants that killed John Imperial an Ambassabehature, and must receive the same answer; and behature is this. The Statute of the 25 E. 3. was ogical ade to declare certain matters Treason, and to en hat Statute did provide, that if any other Case, Per upposed Treason, do happen, it shall be shewed the the King and Parliament, whether it ought to entire judged Treason. Concerning which the King on, and Parliament do and are to declare by their e a Legislative power, as it is agreed by all, and as by hey did in the Case of John Imperial, as appears the by that Record expressly. So that though the Bishops were not present at the Judgment of

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John Hall, they might have been (it must be fessed by our Adversary) if the Judgment and John Hall was by the Legislative Power, By this it appears how false an A ment this of his is, To conclude no Right absence; for it is plain, it proves too much proves a thing notoriously false, a thing by the confession of our Adversary: and what any fallhood may be inferred, is not it true, but stands reproved by the falshood and furdity of what follows in consequence the But this is too Solemn a Reproof of fo frivolous Argument, for it is no more in effect thank That no man can have an Authority, but what is always in the exercise of.

The Octavo goes on, and remembers that the 2 H. 4. the first Writ de Hæretico combun was framed by the Lords Temporal only; without question it was so. For the orde proceedings in Case of Hereticks Convict, & The Bishops are upon the Ma quired it. the pars læsa in Heresy. The authority of Church is therein offended, and it was not the fore proper for an Ecclesiastick to be an A

therein.

The Author doth improve this, as he dot things that he can with any manner of cool to render the Order of Bishops hated, and steemed, which is the publick establishment, is b legal provision for the Government and guida of Religion. What mischief then is he a down P ow great is his fault to deprave that provision, destroy their Reputation and Esteem with the ople, to despoil them of all authority as much as him lyeth? His utmost endeavours are not ereto wanting, to make their Ministries useless, d to frustrate the provisions of the Law, and e care of the Government, in the highest conment of the Nation. Doth this become a great an, I will not say a good man? God rebuke m. To lessenthe Authority, and disrepute and shonour any Order of men, or any Constitution, that can be any ways useful to the publick, a great fault: but this of his, is a most enorous offence.

But what can be inferred from hence against e Order of the Bishops, may be with like unorthiness inferred against the Christian Religion it self. For it may be as well concluded, that e Christian Religion is a bad Religion; for that en of that denomination in the general Papal postasie, by pretence of Warranty from that Region, though it gave none, murdered innocents: s that the practices of the Bishops of that Region so deprayed, do reslect any dishonour gainst the Bishops of reformed Christianity. Ind this Answer will suffice too for the Case of ir John Old-Castle.

As for the Farle of Year Total Castle.

As for the Earls of Kent, Hunting don and Saisbury, the Lord le Despencer and Sir Ralph Lumey, before that, executed and declared Traytors in Parliament by the Lords Temporal only, in the

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the Parliament of the 2 H. 4. and the But in Northumberland & Lord Bardolph, against who forested in a Court of Chivalry to their death, who were declared Traytors they were dead, in the Parliament in the 71

I hope the Octavo Gentleman, and are at present of his Opinion, will take this fufficient Answer (if we had no more to y a tby that it was irregular, very irregular inde condemn men after they were dead; when condemn men after they were dead; when I can himself would for such a pretence set aside Isso Authority of the Case of William de la Pool reat 28 H. 6. in Parliament where the Bishops w present: which though he saith is the soking precedent of Bishops acting in Capital Can We shall therein convict him to be a man of ere to have lost himself in his passions, and And enter that Case with a cloud ace other testimonies and reasons that affirm, I have not stick to fay, demonstrate, (so as such man with can be demonstrated) with a moral demonstrated tion, fuch as shall leave no doubt with any men of the Bishops Right of judging in Capital Qu fes in Parliament.

But We shall further add for Answer that Temporal Lords did not herein exercise the fice of a Judge. For it could be no Judgme they delivered. It was only an officious de ration, an avowing of the justness of the slaw ter of these great men, and to enter themselve

of the other fide.

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But is it unreasonable for this Writer, to think It we fore-judge the Bishops of this their Franchise, to have it seized, because they would not be lty of a misuser thereof, and would not consent o insolent a thing as to judge men unheard, when dead, and they could not be heard? d to kill over again the murd red Lords, for fo y are in consideration of the Law, who are t by legal process condemned and executed. I cannot but observe in many of the great conide Isions of State, and the simultates amongst the reat men, and extravagant excesses of injustice, the glory and honour of the Bishops it must be er be remembred, that they did preserve them-all lives from being ingaged in such violences as the ere committed against the last mentioned Lords. the glory and honour of the Bishops it must But that the Author of the Octavo should prothe Case of Sir John Mortimer against us, tho was condemned upon a bare Indictment without Arraignment or due Tryal (a good reas on why the Bishops were not there) when he ammediately after produceth the Case of the Duke of Suffolk wherein the Bishops were pre-tent, and will have it stand for nothing, because in that, it was irregularly proceeded, is monfrous partiality and iniquity. But in what I pray was the irregularity in the Case of the Duke of Suffolk? Why, because the Commons desired he might be committed upon a general Accusation: But he was not. And the second irregularity was, that some Prelates and some Lords should be sent down

down to the House of Commons, which is eigh But it is not the Prelates that he is concerned for, but that the Lords lessened This (to excuse him) might make very angry with that Case and quarrelsome yet after all there is a fallacy in the Q Sir John Morting which he would put upon for Sir John Mortimer was condemned by Parliament; and therefore the Bishops have been there if they had pleased, and with his leave. For it was by the Duke of Glory (who in the Kings absence was commissionate call and hold that Parliament) by the Advid the Lords Temporal, at the prayer of the wh Commonalty in this present Parliament, by the Authority thereof, ordered and dea that he should be led to the Tower, and thence drawn to Tyburn.

I cannot therefore but observe how by the tence of the Canon a σοφον φάςμακον fometimes, by other prudent Arts and Recesses from tu tuations, the Bishops kept themselves often being engaged in the Animofities of Great against one another: A matter remarkable the commendation of their Exemplary Will and Justice, and a Recommendation of them of that Order to be continued in the greatest the that the Government hath committed to then

But now shortly and summarily to revis what we have offered in the matter of Precedent and together to confider what true values

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eight they are of, in the Cases of Roger Mortier and Haxey, and of Sir John Mortimer, 2 H. 6. ery body may fee a reason why the Bishops buld not act, if they had Authority, and erefore without wilfulness it cannot be conne. Cal uded they had none. Who fees not that thefe ases are Precedents for us? for that the Bishops dged in the Reverfal of the Sentence against Taxey, which if they had reason for it, they ight to have affirmed. And the Bishops might ave been present rightfully at the undoing the stainder of Roger Mortimer, by the Confessions these Authors.

The Proceedings in the Parliament of 15 E.3. is true argument only of the Bishops modesty. But hey prove more than he is willing to prove, if rue, viz. that the Bilhops cannot joyn in making aws to punish publick Crimes, and therefore ogically conclude nothing; besides that the mat-

er is false in fact, as it is alledged.

The Cases of Sir William Thorpe and Sir Ralph Ferrers (taken at best for him) are but militant, and have as much to fay for, as against the Bi-hops being there present. But to be true to the cause of the Bishops, We have this advantage against him, that the Bishops were always in the possession of their Right, because never fore-judged, and it was once theirs, as we shall prove by and by: And this makes a presumption that they always used it, when there is nothing to the contrary.

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The Bishops were not present in the Bis Norwich's Case: but the Bishops may be time absent upon a sontica Causa. The defe was a Bishop, which was a very allowable in those times. But this must be considered the Case of Thomas Arundel Bishop of Cante in whose judgment they were present vin by their Proxy; and therefore had a Ri be there.

The Case of John de Gomenits, and Will Weston is unduely, and against the faith Record produced against us; for upon the of the Record the Bishops were present, non standing any thing that can be from the

duced to the contrary.

The Case of Sir William Rikehill 1 H. 41 us, so is the Case of the Earl of Northumber 5 H. 4. The Case of John Hall who mun the Duke of Glocester, and of the two Merc that killed John Imperial the Genoua Amb dour, 3 R. 2. are foreign to this question, fo is the Case of Sir John Mortimer, except cial Authority and Legislative Authority Blood, are of the same consideration, as I they are, and shall hereafter make out to probable: and then those Cases are for Right.

They confess that the Bishops might have present if they pleased, and their absence at passing of those Bills doth not conclude again

their Right, themselves being Judges.

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The Writ de hæretico comburendo, is of another fideration, and doth not fall in with the present flion. There was no Judgment given, or to be en, in the Cases of the Earl of Hunting don, Kent, lisbury, Lord Le Despender, Sir Ralph Lumley; Earl of Northumberland and Lord Bardolph. All these Precedents, such as they are, hapned in no long Tract of time, but very tultuous; Not one of them pretends to be an clusion of the Bishops upon Judgment or posie declaration of State. They pretend to be ly instances of Omission, or non user, which y well confift with a Right. And yet contrary the true import of these Precedents, and the e Nature of them, being only of Omission and sence of the Prelates; which as they are, can ke no induction or establish any proposition; hereupon to frame an Argument or conclude a escription; besides that a prescription is not flible in a meer negative, and to and of nothing; cept it be to a liberty of using or not using is Right and Authority. And where no body the or possess that Authority in pretence the defailance of the party to use it, whose ght it was. Besides that it is not a preriptible matter (which we shall further exain hereafter) it being in a matter of the overnment, and a Right arising from its conitution! Contrary, I say, to the whole hate of the matter, He makes this Argument; Sæpe facto ad jus valet argumentum. His Argument

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ment should have been (if agreeable at all to matter) this, That where a right is someth not used, there can be no Right. But if this been said in *English*, every body would have demned his reasoning, and disallowed, if

laughed at the Argument.

So that we have left this Author neither fon or Argument. We have stript the Carall the Precedents that pretend to savour it have left it Rara Avis indeed, but not nigrollima Cygno, as the learned Author in Octavit, with which he reproaches the Right of Bishops as assisted only with a single Precede But to a Bird of no colour at all, the bishing Fable I mean, furtivis nudata coloribus, to be posed to laughter with its naked Rump.

autonia CHATA

But if these Precedents had been all a they pretend to be, and the Bishops not sent in Judgment, in any of those Cases with Octavo and Folio have produced, and is had been all Capital Causes that came in ment in that House, and all determined cially, and not by the Legislative power Parliament, and no reason was to be all for the Prelates absence from the Nature of Cause: If they had had no inducements to the Prelates absence from the Nature of Cause:

aw, from any diffarisfaction they had in the ofecution, and the pretended Right of the hurch-men (in those days much insisted upon) be exempted from the jurisdiction of secular ourts, had not been the Cause of their absence, sich suppositions are not so in fact: And tho' e Bishops had hever used the Authority and ower in question as they have; yet if we can ove they had once a Right, those Omissions of Phough then (I confess) we should labour ainft an invincible prejudice in the Opinions of oft.) F. For that no man can lose a Right by not ing of it, but where that right can be usurpt by other, and is to And that usurpation having een for immenderial time, when no body can Il when it was otherwife, shall in a matter rescriptible be intended to be acquired by good ight; and that with great reason, in favour possessions and the quieting of them; for that Mates and Rights can last longer than the rants and Evidences or Records themselves, hat first created them. But not where the nature f the Right is such as this of the Bishops in preence is, which no body can use for them. he Temporal Lords fit in Judgment in their own Right, which is a plenary and compleat right, and cannot be made more or less. Secondly, for hat no Franchife from the Power and Authority ipward of a Court Leet, which can be neither more nor less by usage) other than the Law hath

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establish't, can be prescribed to: Andra Quow B om ranto will fore-close and extinguish an imme rial usage of any irregular and illegal France Thirdly, A Right that can never be preju and fore-closed by non user (and such is e Right that grows, from the constitution of Government,) though it should be discontin for a long tract of time, may be at any time in fully and legally recontinued.

The happiness of our Case is, that we point to the time when the Right of the Pres to fit in Judgment in Capital Causes in Par ment, was established; And which is more, posed upon them, and they put under a Co pullory, and obliged by the Tenure of Lands to serve the Crown in that capacity. that was in the beginning of the Reign of Wil the Conquerour: Mr. Selden in his Title Honour, with great probability hath fixed the 4th year of his Reign, when he made the shopricks and Abbies subject to Knight sen in chief, by creation of new Tenures upon the and so first turned their possessions into Baron and thereby made them Barons of the Kingo by Tenure. This he faith is justified by Ma Paris, and Roger of Windover, out of whom Ma Paris took this Relation. Anno 1070. (6 a their words) Rex Willielmus pessimo usus confi Episcopatus & Abbatias omnes quæ Baronias is by Anticipation; for the Lands after med Baronies) tenebant in purâ & perpetua, & eatens no

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ow b omni servitute seculari libertatem habuerunt, me ab servitute statuit militari,&c. This he makes rther probable, for that in a Manuscript Copy, hich he used, in a very antient hand, these S e of ear 1070. hoc anno servitium Baroniæ imponitur tip amesiæ. It seems, saith he, the Volume belong-tip I to the Abby of Ramsey; And some Monk of ords are noted in the upper Margin over the to the Abby of Ramsey; And some Monk of he House noted that in the Margin, touching his own Abby, which equally concerned the est of the Abbies that were mentioned in that elation; by their Lands being put under the enure by Barony, and they made Barons, they ad a Right to sit with the rest of the Barons in councel or Courts of Judgment. For saith e House noted that in the Margin, touch-Councel or Courts of Judgment; For saith Ar. Selden, tenere de Rege in capite, habere possessiones sicut Baroniam; and to be a Baron, and to have Right to fit with the rest of the Barons in Council or Courts of Judgment, according to the Laws of that time are Synonymies. So that there were no distinctions of Barons, as to power and Authority, or Jurisdiction; but the Right of a Baron was the same, whether he was a Temporal or Spiritual Baron, for the Tenure of both poral or Spiritual
is one and the fam
must be the same.
The office of be is one and the same, and therefore the Services

The office of both (that is, the result of this Tenure) is the same in the House of Lords, and indeed no office can be less than what the Law appoints it. The King cannot make a Peer, a Judge or a Bishop, and put any Restraint upon

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the exercise of the powers, and the jura ordinathat belong by the appointment of the Law that belong by the appointment of the Law the Peer, Bishop or Judge. That it is an office by nure, can make no difference, for the Law dechathe Power and Authority: So that the Power all Barons are and most be equal, and what is lowed to one Baron cannot be denyed to another than the power and the power and the power and what is lowed to one Baron cannot be denyed to another than the power and the po

William the Conqueror made the Bishop rons. By putting them to hold as by Baron did not intend only the Bishops more honour himself also more service, and better assured cannot be intended (especially) to abate their service in punitive or vindictive Just which a Conquerour of all other performance cannot want.

I do not doubt, and if it were not unnece to this question, I would shew that before Conquest, the Bishops or Spiritual Lords a great share with the Thanes or Tem Lords in the Government, and were then of the three States, agreeable to all the Ga Saxon (for the Saxons were Goths which must not here insist upon) and Modern Gove ments that have been planted in Europe, wil we shall speak to more hereaster: But wer refort no higher, than this of their become Barons by Tenure in time of the Conquero for the clearing of the Prelates Right now And therefore we are not concern to fay any thing to the Case of E. Godwin, m tioned in the Octavo, in Edward the Confelling time ime: neither shall we, because for Brevity sake, we will not pass the Limits of our own Argunents, otherwise we had much to say against the Authority of that Story, as it is by the Octavo nentioned.

To this day, neither in Record or History,

To this day, neither in Record or History, have we heard of any the least pretence of any pecial abatement made of any service, due by the Tenures by Barony, to any Bishops or other Spiritual Baron by the Conquerour at the time of the creating those Tenures; neither did the Bishops when they would fain have been excused from judging in Blood ever pretend it; or make any such excuse, that their Tenures did not oblige them thereto.

They have ever been esteemed to have power of Judgment in Capital Causes in Parliament: and in a long tract of time, it hath been several ways used and acknowledged. Their Right is fo far from being fore-judged, that it never till of late was brought in question. They have pretended fometimes that they ought not to use that Right in observation of the Canon Law, and have made their protestation according; whether of necessity or choice shall be considered. They were upon the score of the Canon Law indulged in the Statute of Clarendon from being present and assisting in giving the Judgment of Death and mutilation of Limb, yet their Right was not by that Statute destroyed or hurt, it put them only at liberty to use it, or not; but put no obliga-

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obligation or legal restraint upon them notto it. That Law was in favour of their Libe

not a Restraint upon their Right.

The words of that Law that concern question, we shall here set down. Archiepis Episcopi & universæ personæ Regni qui de Reg nent in capite, habeant possessiones suas de Reg cut Baroniam, & inde respondeant Justiciarin ministris Regis, & Sequantur & factant omnes suetudines regias, & sicut cæteri Barones del interesse judiciis Curiæ quousque perveniatur diminutionem membrorum vel ad mortem. Whether these words are words of Liberty or Restrain of prohibition or indulgence and favour, sal how far this Favour, Liberty or Indulgence der extend, will appear clearly by confidering to tm occasion of the Law, and the History of the d b times, for whose sake it was made, and use n what inducements, and how far they did use to their Liberty afterwards.

It is notorious that the defign and endeaward of some Bishops of that age, and before from the days of Gregary the seventh, was to establish king Ecclesiastical Monarchy in the Pope; to maresis themselves the Grandees of another Kingdon bli they endeavoured to exempt themselves from a very Civil subjection, as also from being any part of Te the Civil Government, over which their Church Bis Empire was to rule and domineer. They look Ec upon their Baronies to be marks of Slavery, at the inconsistent with their designed Church-Empir die ge egin

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which they were kept in subjection to the vernment, and made a part of it, which defigned by the Conquerour, but most sharpomplained of, as may be seen in Mat. Paris. Willielmus pessimo usus consilio Episcopatus sub vitute statuit militari, & rotulas bujus Eccleice servitutis ponens in Thesauris, multos vi-Ecclesiasticos buic constitutioni pessimæ relutes à Regno fugavit. If the Bishops then had n ambitious and defirous, that they might as the rest of the Barons were, Judges in the must be a word of Exclusion, & that their pre-ice of judging was fore-closed as to all matters der the quousque. For if I ask a thing which is to my right, that which is not granted is denied, and by fuch denial (in case of a Law declared,) e more unlawful. But this cannot possibly be, they were already Barons, and Judges as ther Barons. This they reckon'd a servitude, was matter of grievance and complaint: But the Affise of Clarendon did proceed from the King, for the afferting his Soveraign Power, to result the design of the Papal Monarchy and to blige the Bishops to continue part of the Government, and to tye them to the duty of their Tenures. Gervasius tells us, Col. 1386. that the Bishops did not know what the Consuetudines Ecclesiastica in the Assise of Clarendon were, but they imagined them to be evil, because the King did so much insist upon them, Nesciebant (saith he

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he speaking of the Bishops) hucusque que le of illa consuetudines, sed pravas esse suspicaba n ca quod tantà instantià peterentur. But the Kin the manded as followeth, sapientia provedion disquirite Avi mei consuetudines, ut in s fe: redacta deducantur in medium & publice rea es fi tur, quas cum seorsum veteres actus & pran fo he calls the Statutes of Clarendon, in for nou duxiffent, bæc tandem scripta modo Chirogra Car tulerunt, which the Arch-Bishop was re in E to feal as the custom then was in passing of ich It is likewise evident in the very Affise of a ir j don, that the Bishops were then Barons ought to do the office of a Baron, and week ing Barons Judges, and ought interesse from Barones Judiciis Curiæ Domini Regis. far they should by that Statute be bound after, this Law was to determine: In confe the Quousque is but a Clause of Liberty (at an and the matter under it, left to choice. A ses, ledge indeed the Bishops might hereby obtage judge, or not to judge in Causes of blood, and they used in all after-times, as they pleased, a meddid more or less regard the Canons, as thee they did or were thought to intend. Their we of judging was not hereby fore-closed, but ola blisht, for the words are debent interesse. I of Quousque is a Clause of exception, and is just them in that matter at large, and favours of all of a prohibition. But though the Bill re might have such a Liberty, by the Letter of fa

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se of clarendon, to judge, or not to judge at n capital Causes, which doth not at all imtheir Right, but that notwithstanding they use their rightful authority, when they le: Yet the Bishops did not intend themes further priviledged by this Law, than that should not be obliged to be present at the nouncing of the fentence, which appears by Canons that have been made about this matin England, which we shall mention hereafter, ich would have been most peremptory in ir prohibitions and very severe in their de-incing Curses, in a matter of this nature, ar as they had the Laws on their side. As also the Practice of the Bishops in those times, the Practice of the Bishops in those times, nich appears by Peter Blesensis, whose words , Principes sacerdotum & seniores populi, (by hich he means the Bishops, who from the digniand worthiness of their Order are called Senies, a note of dignity in all Countries, in all ges, which I observe because some are so ignoant as not to know it, and think the Laity is meant by feniores populi, but if the Lay Barons had been guilty of that, which he there complains of, as well as the Bilhops, he would instead of this complaint, declaim'd against the folly and madness of the Age, for want of justice) Licet non dictent judicia sanguinis, eadem tamen tractant disputando, O disceptando de illis, seque ideo immunes à culpà reputant, quod mortis aut truncationis membrorum judicium decernentes, à pronuntiatione duntaxat

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Es executione pænalis sententiæ se absentent it is most observable, that the Bishops did excuse themselves from Session in Crim Causes, by virtue of the Assise of Claren but from the inhibition of the Canon; and fides the use of the Liberty will best declar Nature of it.

CHAP. V.

T's most remarkable for the understand aright the true meaning of this Law, that Bishops were admitted Judges in Parlian without exception of the Temporal Lords, in Case of Thomas Becket accused of Treat though the King and Temporal Barons reason to believe, that the Bishops would no right to the Crown against that unruly as bellious Prelate: and when the Bishopsth felves would have been glad of that pretent have withdrawn themselves. And this wa bout eight Months after the making the State of Clarendon; And in a short time after fwearing the observance of them by all t Grants of the Kingdom. But the Law W then so well understood (however the Lett of the Statute makes matter of dispute now that it was by no body in the least pretented Bo that it was to be understood to such a sence as it is now drawn to : viz. to exclude the R Bishops

hops the Spiritual Barons from judging in call al Caules in Parliament. In those times they donly such an understanding as we have here fore offer'd.

rem and We shall therefore now proceed to give you lan account how in the course of time the ght of the Prelates hath been used and regnized. We will begin with the Case of ecket Arch-Bishop of Canterbury, at a Parment held in October, in the 11 H. 2. Anno omini 1165, at the Castle of Northampw. To this Parliament Arch-Bishop Becket. as cited as a Criminal, and had not his Sumons as Arch-Bishop (so that that Parliament em'd to be conven'd for doing him Juice; the Offence must therefore be very reat; so Stephanides tells us, as he is cited by Ar. Selden 707.) Though he was wont of cutome to have the first Summons by the Kings Writ. Nec tunc enim (faith he) nec liu ante ei scribere voluerat, qui eum salutare nolebat. Nec aliam per literas sibi directas solennem ac primam, ut antiquis moris erat, habuerat Archiepiscopus ad Concilium citationem. Becket was there accused of Treason, læsæ majestatis coronæ, saith Fitz-Stephen a Monk of Canterbury that attended Thomas Becket the Arch-Bishop in his troubles. Bishop Godwin in his Book de Præsulibus tells us that Arch-Bishop Becket, Omnia sibi cernens infesta, Naviculà apud Rumenegam conscensa, in Galliam profugere cona-

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tus, ventis adversantibus in littus repertus u d on rself prehensus ad Regem, Conventus Northampi agentem, adductus est. Ibi, repetundarum, m atus, perjurii, proditionis, falsi & nescio qui orum Criminum, cum à cæteris proceribus ti Episcopis ipfis suffragancis, reus factus. Court is called a Parliament by Mr. Sal and magnum Concilium by Roger of How and by others as Mr. Selden faith; But & was a Parliament and not the Curia R which we shall speak about hereafter, appear by this certain diagnostick, viz. the Bishops were Summoned hereto by fonal Writ of Summons to them directed mediately at that time, which appear what is before sited out of Fitz-Stephen, what is after taken out of Gervafius. the Curia Regis they were Summoned by Sheriff by a general Writ, to him for that pose directed, which is a distinctive Non Character of a Parliament, as will here appear.

But Fitz-Stephen faith, as Mr. Selden him, Titles of Honour, Fol. 705. that fen die consulentibus Episcopis & Baronibus And omnibus. Nay he is so exact in his observation that he tells us who was not there of Bishops, viz. Roffensis Episcopus, & qui alius nondum venerat. Hoveden tells us, Becket had before behaved himself towards King, that notwithstanding great endeaven

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d on the Kings part, to reconcile Becker to us qu nself, He would not be reconciled to the g. Post multum tempus, saith Hoveden, sulphus Lexoviensis Episcopus venit in Anam, & sollicite laboravit die ac nocte, ut pax et inter Regem & Archiepiscopum, sed ad plen fieri non potuit. Deinde per confilium Lexenfis Episcopi Rex separavit Rogerum Archiecopum Eboracensem, & Robertum de Welun iscopum Herefordiensem, & Robertum Linniensem Episcopum, & alios quosdam Ecclesa clatos à Consortio & Constito Cantuarienses rchiepiscopi, ut per illos profatum Cantuarienn Archiepiscopum in suos Conatus facilius alliret. Deinde venit in Angliam quidam vir Reciosus dictus Philippus de Eleemosyna missus à tere Alexandri Summi Pontificis & Cardinaum omnium ad pacem faciendam inter Regem & erchiepiscopum Cantuariensem. Per quem sumus Pontifex & omnes Cardinales mandaveunt Cantuariens Episcapo, ut ipse pacem cum lomino suo Rege Angliæ faceret, & Leges suas ine aliqua exceptione custodiendas promitteret: bis igitur & aliis magnorum virorum Confiliacquiescens, Thomas Cantuariensis venit ad Regem apud Woodstock, & ibi promisit Regi, & concessit se bona fide & sine malo ingenio leges suas servaturum. Et paulo post congregato Clero & populo Regni apud Clarendon, pænituit Archiepiscopum quod ipse Concessionem illam fecerat Regi, & wolens resilire à pacto, dixit Se

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se in illa Concessione graviter peccasse, & in hoc amplius non peccaret. Rex plurim Pope irà adversus eum commotus, minatus est eile Exitum & Mortem. Venerunt ergo ad Arch scopum Salisburiensis & Norwicensis Episcop Robertus Leicestriæ & Reginaldus Cornubia mites, & lachrymantes provoluti ad pedes chiepiscopi petebant, ut saltem propter hom Regis veniret ad eum & coram populo dicere Leges suas recepisse. Precibus igitur tant virorum Archiepiscopus victus venit ad Re & coram Clero & populo dixit se Leges illa Rex avitas vocabat suscepisse, & concessi Episcopi Leges illas susciperent, & ut illa stodire promitterent. Tunc præcepit Rex un hs Comitibus & Baronibus Regni, ut irent G. recordarentur Legum Henrici Regis An & eas in scripto redigerent. Quod cum fuisset, præcepit Rex Archiepiscopis & Epi ut sigilla sua apponerent scripto illi; & cæteri proni essent ad faciendum, Archiepifa Cantuariensis juravit quod nunquam scripti figillum suum apponeret, nec leges illas co maret.

If this was not an encroaching Ro power, there was never any fuch fault, wh he was grown fo great that the King felf must supplicate; that the great ment that time, though passionately interceding the behalf of the King, could obtain no pass for the King. That an Ambassadour from Pop

Pope and Cardinals must be sent to comhand him to be reconciled to the King. That e did make a shew of being the Kings Friend, nd did promise to be at Peace with the King nd keep his Laws, at the Popes Command. yould fin no more. Was not this man a fraytor at Common Law before the 25 of the delare and pronounce him so? And dother the Office of the Government declare and pronounce him so? ne Octavo Author think that a Parliament vould not use the declarative Power by that tatute reserved, to declare such offences as hese, Treason? If the like Case should hapen, would not he himself be the likelyest nan to be foremost in the Impeachment? But Gervasius Dorobernensis goes on and tells us, hat afterwards Becket did voluntary Pehance, for the aforesaid promise made to the king, and of his Submission to his Laws, and stood out in disobedience. That the King did cast about and study, quomodo vel qua arte constantiam Archiepiscopi conterere valeret, vel elidere virtutem, Col. 1388. But see in what respectful terms, their Author in the most respectful terms their Author in the mean ime speaks of this Becket. We may be sure, we can have nothing from them, that is not true, if it makes the Cause of this contumacious rebellious man bad. But at last the Kings patience is turned into Anger. For Gervasius goes on, Col. 1388. and saith, Timens autem

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Rex Angliæ, ne impune manus ejus Cantuarie Episcopus evaderet, jam edoctus multiplici gitatione & pravorum Eruditione quibus pravitatis laqueis innodaret, Præcepit Præfile Proceres Regni, apud Northamptoniam uniu Archiepiscopo ipso convenire, qui cum tertia convenissent, Archiepiscopus in multis est accula And no man can believe his Accusation less than Treason, that will believe who faid by all Historians of Beckets Rebellion haviour against the King, and the Kings conceived against him, his threatning him death, and the convening of this Parlian lest he should escape unpunisht: And es ally that will observe the partiality of this valus against the King, and in favour of B For he faid, as is before observed and that now the King was edoctus multiple gitatione, &c. that now the King with thought, and the Advice of wicked men instructed how he might ensnare him evil Arts, and for that purpose this h ment was convened. And yet in part lar this Gervasius and Fitz-Stephen, his h ful Friend, who accompanied Becket in troubles, mentions only two faults, when he is accused, viz. of injustice in the Case John Marshall, and of his own Contum in not obeying the Kings Summons. In Stephen, Hoveden, and Gervasius tell us, that the two particulars Becket made his defen Gervan

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ervasius and Hoveden tells us what desence e made, which the Octavo hath faithfully anscribed, to do him right: (I wish he ad observed the whole story, then he would ave faved me this trouble of bringing it inthe view of the World.) The Article herein he is charged, for not doing Justice John Marshall, is answered by laying the ult upon Marshall himself, for abusing the court, bringing veterum Cantuum Codicillum; fwear upon, refusing to swear sub Evanelium, ut moris est. The other Article he nswered, proving by two sufficient Witnesses, hat it was Sickness hindred him and he not in ny contempt; Very sufficient Answers to hose two Articles, and certainly the Parlianent that was called only for to punish Becket, night have well acquitted him and returned nome, and a weighty cause indeed this was to convene a Parliament.

But these were but two of those many things (for multis est accusatus saith Gervasius) and of the least offence (besides that they were fully answered) in any mans judgment that hath read the Story of Becket, of which he stood accused. By what I have here transcribed it appears, that he was certainly guilty of Treason. That the Parliament was called to punish him: The King was enraged and that justly, and therefore he was most certainly accused of Treason. Gervasius

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goes on and tells us, that his ration (meaning that he offered in excuse of him in the business of Marshall and his own tempt) Archiepiscopus excusari non potuit Curiali judicio, & Assensu Episcoporum con natus est, ita ut omnia ejus bona in miserica Regis ponerentur. And yet the profection went on. The Bishops are consulted with Becket, how he should behave himself. T Gervasius tells us, Col. 1398. You may understand the Nature of the prosecution Beckets danger, by the advice of some of Suffragan Bishops. The Bishop of La thus adviseth, Si pater, inquit, recolis, und Dominus Rex Sustulit, quid tibi contulit, derata temporum malitia, quam Ruinam Ed & nobis omnibus paraveris, si in his Regi re volueris, non solum Archiepiscopatui Cantu sed in decuplo, si tanti fuerit, cedere dem Could all this danger grow from less than I son? Could a bare neglect to answer a mons, where he excused his default sufficient or refusing to proceed in the Case of Mar for that he did presumptuously trifle with Court, and Profanely offered to be Swom on a Song-book, put the whole Church himself in danger big enough to be redeen with ten times the value of the Bishoprid Canterbury.

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The Bishop of Lincoln speaks in Gervaius these Words: Patet, inquam, vitam istius pominis & sanguinem quæri, & necessario alteum horum erit, aut Archiepiscopatui aut vitæ celendum.

The Bishop of Exeter thus: Palam est quoiam dies mali sunt, & si possumus sub dissimulaionis umbrà, hujus tempestatis impetum pertranire illæsos. And after he saith, satius est unum Caput in parte periclitari, quam totam Anglicanam Ecclesiam inevitabili exponere discrimini.

The Bishop of Worcester, saith Gervasius, being asked what he thought, it a temperavit Responsum, ut & negando palam fecerit, quid animi haberet. The Bishop of Ely was sick. The Bishop of Norwich, the same Author saith, excused himself, secreto asserens Eliensem fæliciter, adeo defensum, & quod ipse vellet simili plaga percelli, for he had heard, faith our Author quid Rex conceperat contra Cantuariensem.

Becket not resolved what to do, desired of the Earls of Leicester and Cornwall, that he might have time until the morrow. And the morrow being Sunday, time was given until the Munday, and then the Bishops came to Becket and advised him, for avoiding danger and scandal, to submit himself to the Kings Will; which if he should not do, jam audierint in Curià Regis perjurii Crimen sibi imponi, & tanquam proditorem judicandum, eò quod terreno Domino bonorem terrenum non servaret, cum avitas con-

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fuetudines Regni observaturum firmasset, ad a specialiter observare jurisjurandi nova se silla astrixerat Religione. And now sure it wills believed that Becket was accused in this Parliment of Treason, for Treason was his Crimot allowing the King, with the consent of States, to make any Laws, but such as he show approve, aggravated with Perjury, for he form himself to observe them.

After Becket had given the Bishops an obj nate and resolute Answer to adhere to his To fonable Practices, to difallow the Authority the King and States in the Laws called the fife of Clarendon, and to oppose the observa of them; Observe what Gervasius saith, cesserunt Episcopi ad Curiam properantes. and by Becket comes too (but the Bills were there before him) carrying the los himself, which the King, as well as the shops, took to be a coming Armed. Un which, faith Gervasius, vocatis Episcopis & In ceribus gravem & grandem Rex deponit quein niam, quod Archiepiscopus sic armatus in Curin veniens ipsum & suos omnes, inaudità seculism mâ, nævo notaverit proditoris. Whereupont Bishops by the Mouth of Hilaris Cicestrens Bishop more eloquent than the rest, thus said Becket, Quandoque, ait, fuisti Archiepiscopus, tenebamur tibi obedire, sed quia Domino Regi sid litatem jurasti, boc est vitam, membra & terre nam dignitatem fibi per te salvam fore, & consue tudines tudines quas ipse repetit conservandas, & tu niteris eas destruere, cum præcipue spectant ad terrenam sui dignitatem & honorem; idcirco, te reum perjurii dicimus, & perjuro Archiepiscopo de

cætero obedire non habemus.

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This I take to be a judging in Treason. But this the Bishops did for their part, as Bishops and Suffragans they did withdraw their obedience from their Metropolitan, which was (as much as in them lay) to deprive him: A conviction it was of the Guilt, not indeed judicium sanguinis. But this is not all; for observe what our said Author saith further, they going away, the King saith to them, discernite quid perjurus & contumax proditor debeat sustinere. Itur & judicatur, & à quo vel quali-ter judicium pronuntiandum esset, informatur. In which matter Stephanides, as he is cited by Mr. Selden in his Titles of Honour, in the Folio Edition, fol. 705. tells us, how it was consulted and debated between the Bishops the Spiritual Barons, and the Temporal Barons, for faith he, de proferendo judicio distantia fuit inter Episcopos & Barones, utrisque alteri illud imponentibus, utrisque se excusantibus. Aiunt Barones, vos Episcopi pronuntiare debetis sententiam, ad nos non pertinet, nos Laici sumus, vos personæ Ecclesiastica sicut ille, Consacerdotes ejus, Coepiscopi ejus. And hæc aliquis Episcoporum, Imo vestri potius est hoc officii, non nostri, non enim est hoc judicium Ecclefiasticum sed Seculare, non sedemus G 4 bic

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bic Episcopi sed Barones, Nos Barones &. Barones, pares bic sumus. Ordinis autem No. ustif rationi frustra innitimini, quia si in nobis ordin tionem attenditis, & in ipso similiter attend debetis, eo autem ipso, quod Episcopi sumus, possumus Archiepiscopum & dominum nosti judicare. By which dispute (by the way) doth appear that both the Bishops and Tem ral Lords did take themselves to be equally of stituted Judges and Peers, by reason of the common Baronage, in this Case of Becker Cause of Treason; the Bishops owned avowed a Right of judging him as Barons, T did not excuse themselves upon the score of Canon alledged, but from the indecency in spect of the relation that they stood in to Criminal, he being their Superiour and Man politan, they feem'd willing to decline making of the Sentence. Whether any Ju ment was pronounced, by whom, or what Judgment was, is not certain, the Historia differing thereupon; But when he went out the Court he was call'd by the People as hep Traytor and perjured Traytor, as the King w fore had called him.

And if this be not the clearest proof Beckets being accused of Treason, and the shops judging in a Capital Cause in Parliament there can be nothing proved to fatisfaction Besides that all that writ of his Story are un willing Witnesses, they magnifie, excuse and iustifi uftifie the man all along, extolling his virtues, They call him Saint, Pater Patriæ (so Gervafius

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oes Col. 1393.) and Martyr.

Let the Reader consider what is here faithully recited, and then let him tell us what Opiion he hath of the Candor of the Octavo Genleman, who could find no fault in Thomas Becket, for he faith, Folio 62. That Gervafius Doropernensis saith, that Becket was charged with two hings, Injustice to John Marshall, and his own contempt in not appearing to the Kings Summons: This Author had nothing of his own knowledge to charge upon him, and faith, that Stephanides is not to be regarded because he was Beckets friend, and an obscure Author, it may be not yet come into his Study,

The Author had reason to see no faults in Becket, or to forget them all for the good fervice the infolencies of that man hath done to-

wards the Scandal of the Order.

But we have not mispent our own time, neither will the Reader regret our length in this matter, for this fingle Case consider'd, gives a Resolution to the Question; and puts the Right of the Bishops to sit in Capital Causes out of all doubt. This Case will let in light for the true understanding of the Assise of Clarendon.

For it must be noted that the Great Parliament of Clarendon was held by Henry the 2d. about the latter end of January, in the tenth year of his Reign; the Bishops and Lords were all Sworn to observe the Statutes there men the (called the Assis of Clarendon) called hour Avitæ consuetudines Regni, of which the Ly) afore-mentioned was one.

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This Law therefore must be interpreted fuch a sense, for that the words will bear and can be intended in no other than that wh may confift with the proceedings in the of Arch-Bishop Becket, and with the Oath all the Bishops and Peers, and the g men, taken but a short time before, to ob the Statutes of Clarendon: Now if the w Order of Capital Causes had been intended excepted by that Statute above recited (u which our Adversaries do so much go themselves) from the Cognisance of the L Spiritual, and they could not be present when any fuch Case was agitated or moved, the Grandees were Notoriously, Wilfully, to Knowingly, and in the face of the whole Wo Perjured to the Eternal infamy of our tion.

Could the whole Nation be ignorant of own Laws and Constitutions, made and swatto but a few Months before? And neither King, Lords Spiritual or Temporal, or Commons understand them? 120 men at least, (habout that number were the Bishops and replay Barons in H. the 2ds. time and not less now come into the highest Judicature in the greatest Cause that ever was agitated. (It was

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n the Case of Becket disputed whether we thould have a Civil or Ecclesiastical Soveraign-ely) and there sit Judges, and no body except gainst them in October, if excluded by the statute made in February before; though the king and the Nobles had reason to suspect hem on Becket's fide, and they unwilling themelves to Judge, and they under an Oath not o fit, and the Temporal Lords under an Oath not to admit them or allow them to be there? And yet not a word of this matter in all the Historians of that time, Thomas of Canterbury his friends to a man, who were forward enough to reproach the Judges fure, when they condemned the Sentence, and applauded the Criminal, and made a Pater patriæ; a Martyr and Saint of this Notorious Church Rebel. He therefore that can believe that the Bishops were not rightful and unexceptionable Judges in Capital Causes in Parliament, in the time of H. 2. may believe that a whole Nation may become of infane Memory at once, go to bed a Monarchy and wake into a Common-wealth. without any notice or observation of a Change. And now that the Affife of Clarendon is of our side, I hope will be admitted, and that the Bishops not only may, but ought to be present in Capital Causes in Parliament, for the words of the Statutes are; That the Archiepiscopi, Episcopi & universi personæ qui de Rege tenent in Capite, habeant possessiones suas de Rege sicut Baroniam,

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& ficut cæteri Barones debent interesse Jud ffice Curiæ Domini Regis cum Baronibus. So ath now they were declared to be Judges as other Barons, in that they ought to be prein all Causes: Only they were favourd much in decent regard to their Order, they were not required to be present at Sentence of Death and Mutilation of Men For as much as they are the Ministers of Pardon, and the Publishers of the Dos and Faith of Repentance; they ought too port with their office, and express their Eva miseration to the greatest Sinner, and to some reluctancy against the Sentence of 0 demnation, and to that purpose is that In gence given them in the quousque pervent ad mutilationem membrorum vel mortem. the Affise of Clarendon having (I will now fay left them, but) required them to be Ju (this exception of Quousque, &c. being only Indulgence as aforesaid upon the Reasons and faid) they remain entire Judges in Capit Causes, and may depart from that Indulgent and ought fo to do when Justice is necessary and the offences more than ordinarily Public and will be Pardoned and escape with imp nity to the hazard of the Government, exce they interpose. For if the Assis of Clarenda had not left them entire Judges of Right, on ly at liberty as to the pronouncing of Sen tence, they had not remain'd Judges; for the office

ffice of a Judge cannot be divided; he that ath not an Authority to judge the Cause, can e reckoned and accounted no other than a Pro Ministerial assistant to the process, in such maters as the Court shall award. Therefore Bihops in that they have intermedled as Judges n fuch Causes have continued and avowed heir Right of judging, and in that they have withdrawn at the Sentence they have used that Liberty.

But to leave nothing for an after Objection, Evasion, or Cavillation, it shall be in our Adversary's choice, Whether this Curia Regis mentioned in the Assis of Clarendon, as also the Court that tryed Thomas Becket, was the Curia Regis wherein the ordinary Justice of the Nation was at that time administred, or the Par-

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If the Curia Regis, and not the Parliament, was intended in the Assife of Clarendon, in which the Priviledge and Indulgence under the Quousque was allowed to Bishops; Then the Assise of Clarendon is unduly urged against the Bishops judging in Cases of blood in Parliament, for that all Laws of Priviledge and exemption are stricti Juris, and not to be extended beyond the Letter of the Law, the fingle instance, or the enumerated Cases; and consequently by the Assise of Clarendon the Bishops have no leave to withdraw in Cases of blood in Parliament.

If the Court wherein Thomas Becket was the Curia Regis, then the Bills judging in that Court in that Cause dother clearly declare (that being a Case in point that the quousque in the Assis of Clarendon an Indulgence and Priviledge, which they mis

wave or use as they then did.

But this cannot be denyed, that the Biffe are and were Barons ever fince the Cond ror, (of which, and of the Curia Regis we hereafter give an account) and whatever the business and office of a Baron, was sequently the office and business of a Bishoo Common Right, and still is, except any I restraint was put upon them by any Law, wh was not done by the Affise of Clarendon, an have proved from the reason of the making that Law, and the Interpretation of that Law that time. Nor was that Law or any otherla hitherto pretended (but only the Canonsoft Church) against the Right and Duty of I shops judging in Capital Causes in Parliamen or if they will have it, in the Curia Regis.

CHAP. VI.

A ND now we proceed further to shew how this Right and Authority of the Prelates hath been used and acknowledged in after-times

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Roger de Hoveden hath remembred in the Life f Richard the First, who succeeded Henry the 2. That before the arrival of Richard the First in England who had been in Captivity in the Emire, that one Adam de St. Edmond, Agent to John Earl of Morton, returned into England, beng fent to Fortifie the Castle of Earl John, against the King his Brother, and was apprehended by the Lord Mayor of London, with several papers of Instructions and Commissions of Earl Johns for that purpose: Hoveden tells us, That the Mayor cepit omnia brevia sua, in quibus mandata Comitis Johannis continebantur, & tradidit ea Cantuariensi Episcopo, qui in crastino convocatis coram eo Episcopis, Comitibus & Baronibus Regni, ostendit eis literas Comitis Johannis & earum tenorem, & statim per commune Concilium Regni definitum est, quod Comes Johannes disseiseretur de omnibus Tenementis suis in Anglia, & Castella sua obsiderentur.

This is a Cause of Treason, for that Richard the First immediately upon the demise of the Crown was King. It can be no objection that this was not a formal Parliament, for whether it was or no, it seems the Bishops power in that Cause was allowed. That it was Commune Concilium Regni, and had the Nature of a Parliament. And that the Bishops therein had a parity of Authority with the Temporal Lords. But soon after his return King Richard held a Parliament at Nottingham. Hoveden mentions the Bishops that were present

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by Name. In which Parliament our Historiants us, That the King Petit sibi Judicium sieri des mite Johanne fratre suo, qui contra sidelitatem que ei juraverat Castella sua occupaverat. Sterrasstransmarinas destruxerat, Sfedus contra cum inimico suo Rege Franciæ contra eum inim

And the like Justice he required against Bishop of Coventry, for that he had adher'd R Franciæ & Comiti Johanni inimicis suis; and was thereupon adjudged, Judicatum (saith Hi den) quod Comes Johannes & Episcopus Contrensis peremptoriè citarentur, & si intra qual ginta dies non venerint nec Juri steterint, Judiverunt Comitem demeruisse regnum, & Episcopus Coventrensem subjacere judicio Episcoporum quod Episcopus erat, & Judicio Laicorum in quod ipse Vicecomes Regis extiterat.

You see here the Bishops Zeal and Loyalty they adjoyn'd the censure of the Church with they had power of as Bishops, to a Civil puniment, which they with the Temporal Barnhad Authority to pronounce against One of the own Order, who was guilty of a design too gage a Nation in a War by opposing the Laws Successour to the Crown; and this being so great a Cause, We hear nothing here of any scrupt the Canon gave them, nor mention of any Priviledge of an Ecclesiastick to be exempt from the Laws of the Canon gave them.

Judgment of the Secular Court.

In the same Parliament Giraldus de Canavilla was accus'd of harbouring of Pirates, and, Prato

rea, saith Hoveden, appellaverunt eum de Læsura Regiæ Majestatis, in eo quod ipse ad vocationem fustitiariorum Regis venire noluit, nec juri stare de prædicta receptatione raptorum, neque eos ad Justiiam Regis producere, sed respondet se esse hominem Comitis Johannis, & velle in Curia sua Juri stare. Hoveden tells us all, that were present at this great Council; Hubert Arch-Bishop of Canterbury, Galfridus Arch-Bishop of Tork, Hugh Bishop of Durbam, Hugh Bishop of Lincoln, William Bishop of Ely, William Bishop of Hereford, Henry Bishop of Worcester, Henry Bishop of Exeter; and John Bishop of Carlisle, Earl David Brother of the King of Scots, Hamelinus Earl de Warrenna, Ranulfus Earl of Chester, William Earl of Feriers. William Earl of Salisbury, and Roger Bigot. Let any one judge, if it was likely that the Bishops did withdraw, in the Case of Earl John, or the faid Bishop, when besides them there were but fix Barons present at that Parliament. What manner of great Council would this Parliament have been, that had confifted but of fix Barons? Of what Authority would fuch a Parliament have been, in the absence of the King, and a troubled Estate of the Kingdom?

CHAP. VII.

IN the time of Edward the Second, in the two Judgments against the Spencers, the Right of the Bishops to judge in Capital Causes in H Parliament

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Parliament was carried so high in opinion, their presence was thought necessary to Authority and validity to the Judgment of House of Lords in such Cases; and their absorber was affigned for Error, for Reversal of the Judgments (for an Error that appears in the gularity of the Proceedings, is an allow Cause for vacating the Judgment by the s Court that gave it.) And fo far did that On on prevail, that the presence of the Lords Spir al was necessary to give Authority to a l ment of that House, that for this Cause, cause the Prelates were absent, that Judgm was reverfed. Which opinion did arise upon mistake, that because the Lords Spiritual was of the two States that made the House of La nothing could be done without their com rence. But though they are a distinct Statemen the Temporal Lords, they make but one had and they are both there under one Notion Reason, viz. as they are both Lords Spiring and Temporal, the Baronage of England.

But let any man tell me that can, whether its Lords Spiritual had not been understood Just in Parliament in Capital Causes, it could been a question whether their absence could awe the Judgment in the Case of the Spencers, miles that such an opinion should prevail, that had Judgment should be (as it was for that reason) wersed. And tho' the Reversal of that Judgment was set aside, and the Judgment affirmed in 18.

3. Yet the publick Recognition of the Bishop Right.

Right in the Reversal remains an undeniable Testimony to their Right of sitting: Tho' the Reversal of that Judgment was not warrantable, for the reason of the Bishops absence, as it could not have been reversed by reason of the absence of as many Temporal Barons if there remained enough besides to make a House to give the Judgment. And yet we find the Reversal of the Reversal reversed in 21 R. 2 and the Family of the Spenters restored in the person of the Earl of Glocester. So prevalent was the opinion that the Bishops Concurrence was necessary in all Capital Judgments in Parliament at that time. For this see Sir Robert Cottons Abridgment, fol. 373.

Yet it is observable that the consequence from the Bishops being a third State, and an Essential constituent part of that House; to a necessity of their presence in all judicial matters, even of Capital Ossences and Treason, did so stick with that Age: for they then in that Age did no more know what two distinct States served for, in that they both made but one House, than some in our

time can tell how to find them.

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For that very Reason in 21 R. 2. the first Petition that the Commons made in that Parliament to the King was, for that divers Judgments were heretofore undone, for that the Clergy were not present. The Commons prayed the King that the Clergy would appoint some to be their Common Proctor with sufficient Authority thereunto. The Prelates therefore being severally examined, appointed H z

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Sir Thomas de la Piercy to assent. The words which Petition, and the Procuratory Letter for greater Authority, and more satisfaction I have thought fit to transcribe. Nos Thom Cantuar. & Robertus Eborac. Archiepiscopi acPm lati, Clerus utriusque Provinciæ Cantuar. & El jure Ecclesiarum nostrarum, & Temporalium ear dem habentes jus interessendi in singulis Parliame tis Domini nostri Regis & Regni Angliæ pro to pore celebrandis, necnon tractandi & expedie in eisdem quantum ad singula in instanti Par mento prostatu & honore Domini nostri Regis, non Regalie ac quiete, pace, & tranquillitate Re judicialiter justificandi, venerabili viro D.The Piercy Nostram plenariam committimus testatem, ita ut singula per ipsum facta in pr missis perpetuis temporibus rata habeantur.

The Commons of England knew what the faid, and could not be miltaken in fact, we know of no Judgments reverfed but those of the Sm cers; But we have no Records or very few of the times before Edward the Third, transmitted us, through the injury of the times, but they the had certainly whereupon they grounded this Petition, upon which the faid procuratory L ters were made, which Petition here follows terminis. Mecredy prochein, ensuant les Commun monstrerent au Roy, coment avant ces Jeures plus eurs jugements & Ordinances faitez en temps des progenitors nostre Senior le Roy en le Parliement eiant estre repelles & adnulles pur ceo que l'esta de Clergie ne fust prest en Parliament a la faisaund des

des dits jugements & Ordenances, & pur ceo prièrent au Roy que pur surete de sa personne & salvaction tion de son Royalme les Evesques & le Clergie ferroient un Procurator avec poiar sufficient pur consentir en leur nosme as toutes choses & ordinances a justifieis en cest Parliament, & que sur ceo chescun Signior espiritual dirroit pleinenent son advys. Sur qui les dits Seigniors Espiritual severalment examines se consenterent de Comettre lour plein poiar grantant en leurs parts & nosmerent on especial Tho. Piercy Chivaler & sur ceo baillerent au Roy une Schedule contenant lour dit poiar, le quelle nostre Seignior le Roy receust & commanda la dite Mecredy estre enter de record en Rol de Parliament;

deque cela Schedule le form sensuit.

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But it is remarkable that this Petition was made in 21 R.2. for that in the 11 R.2. the Bishops had made their Protestation, that by reason of a Canon they could not be present: The words of the protestation we shall here transcribe. Per encheson & certeins mattires feurent mouvez en cest pre-Sent Parliament & toucherent overtement Cryme; L'archevesque de Canterbiry & les autres Prelates de sa province sierent une protestation en la fourme & paroles qui suent. In Dei nomine Amen. Cum de Jure & consuetudine Regni Angliæ ad ArchiepiscopumCantuariensem qui pro tempore fuerit, nec non cæteros suos Suffraganeos, Confratres, & Coepiscopos Abbates Prioresaliosque Prælatos quoscunque per Baroniam de Domino Rege tenentes pertinet in Parliamentis Regiis quibuscunque ut Pares Regni prædicti personaliter interesse, ibidemque de Regni nego-

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tiis & aliis ibi tractari consuetis, cum cæteris lia i mini Regis Paribus & aliis ibidem jus interesse tan habentibus consulere & tractare, ordinare, statu huje & definire, ac cætera facere quæ Parliamentito pore ibidem invenerint faciend. in quibus omni & singulis nos Willielmus Cantuarien. Archiepiscon mai totius Angliæ Primas & Apostolicæ sedis Legatus mu nobis nostrisque Suffraganeis, Coepiscopis & Conf run lib tribus necnon Abbatibus & Prioribus ac Præle omnibus supradictis protestamur, & eorum quili tur protestatur, qui per se vel procuratorem hic fuit in do præsens, publice & expresse, quod intendimus intendi volumus & vult eorum quilibet in hoc p senti Parliamento & aliis ut Pares Regni pred more solito interesse, consulere, tractare, ordina Statuere & definire, ac cætera exercere cum cæten jus interessendi habentibus in iisdem, statu & ordin nobis & eorum cuilibet in omnibus semper salvis. Verum quia in præsenti Parliamento agitur de non nullis materiis in quibus non licet nobis aut alia eorum juxta Sacrorum Canonum instituta quomodi libet personaliter interesse, ea propter pronobis corum quolibet protestamur, & corum quilibeth præsens etiam protestatur, quod non intendimusm volumus, sicuti de jure non possumus nec debemus, tendit nec vult aliquis eorundem in præsenti? liamento dum de hujusmodi materiis agitur vel agitur, quomodolibet interesse, sed nos & nostrum quem libet in ea parte penitus absentare; jure Paritalis nostræ & cujuslibet eorum interessendi in dictolar liamento quoad omnia & singula inibi exercenda nostro & eorum cujuslibet statui & ordini congrum

eristria in omnibus semper salvo. Adhuc insuper proteresse tamur & eorum quilibet protestatur, quod propter status pujusmodi absentiam non intendimus nec volumus, ntitu ec eorum aliquis intendit vel vult, quod processus mul vabiti & habendi in præsenti Parliamento super iscon materiis auditis, in quibus non possumus nec debenus ut præmittitur interesse, quantum ad nos & eorum quemlibet attinet, futuris temporibus quomodolibet impugnentur, infirmentur seu etiam revocentur. Quelle protestation leu en plein Parlement al instance & priere du dit L'archevesque & les autres Prelates susditz & inrollez icy en rol du Parlement per Commandement du Roy & assent des Signiors Temporeles & Communes.

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This the adversaries of the Bishops would have an Act of Parliament, for that at the Prayer of the Bishops, by the Kings command, with the affent of the Lords temporal and Commons, it was inrolled; and for that all the formalities that were used in these times, in passing a Law, was only to have the matter shortly entred in the Roll, or Journal Book, that fuch a thing was agreed upon by the King and two Houses, which was drawn into the form of a Law afterwards by the Justices and Kings Councel when the Parliament was risen; but this was never done in this Protestation, and therefore we might fay that it is not

to be taken for a Law. But we will admit it to be a Law, yet it can be a Law only for that Case, and can be extended no further: Those Bishops protest; but for whom? For themselves only, their own persons,

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not their successors; that by reason of the instinct site tion of the Canon they could not be present ent, certain matters to be treated of in the Parliamen n t What those Canons were they do not tell us. The nad had no other reason but the Canon to pretend prob that time. We hear not a word from them of the on of Assis of Clarendon: And what was it that the Par protested? Why only that they could not be protested? fent: at what? only at the matters aforesaid me tioned in the Petition and in that present Park an : ment. But was this without any regard of the the Right? No they faved their Right, their Just ritatis: pray mark it: what then did they ind fect depart from? nothing. They provided on that they might do nothing indecent or rather m against their good liking, and at the same time consulted likewise the safety of their Estate and Order, and preservation of all their Rights.

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But had they no care of the Authority of the Parliament in their absence? yes, for they very well knew that it was a probable opinion that nothing acted in their absence and during a recess of their whole Order could be rate and valid; and there fore they provide propter hujusmodi absentian non intendimus nec volumus, nec eorum aliquis in tendit vel vult, quod processus habiti & habendi in præsenti Parliamento super materiis auditis, quantum ad nos & eorum quemlibet attinet, futus ris temporibus quomodolibet impugnentur, infi-

mentur seu etiam revocentur.

Let the Impartial Reader Judge whether this be not a famous recognition of the Bishops Right fitting, what a folemn leave they had to be ab-fent, ent, what provisions made that the proceedings men n that Parliament should not be avoided and The nade null by their absence; which implies a great or or of their being necessary in all proceedings in the Parliament. Was there ever such a protestation eprentred on the behalf of the Absentees of Tempo-mer ral Barons? This leave given them to be absent is arly an allowance of Right to sit. The proceedings the they liked not and the Canon was pretended. Admitting this protestation to be an Act of Parne liament, It is an Act of Parliament to give the Bishops leave to be absent pro hac vice, and to make Laws good that should pass in their absence. I appeal to the World whether there can be a more Solemn and Authentick Recognition of their Right than this protestation imports.

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CHAP. VIII.

TT does appear by the whole tenor of this their protestation, that the Canons of the Church, which they pretend, had not passed into Laws; if they had, what need of fuch a warm protestation for the fake of decency only and the honesty of their order, to be rid of a troublesom business? what means the faving of their right, if by Law it had been discharged? what means their further protestation that the validity of the procedings in those Causes in which they withdrew, should

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not be impeach't by their absence, if their Riddle did not remain entire notwithstanding the non? besides that they do not alledge the but the Canons of the Church for their excus

They well knew the nature of Canons, to force and obligation of them, and also that the were not under any obligation to the Canon Le that it was only a Law in the Popes Tempor Principality, and had no Controul upon the Le of this Kingdom.

For the clearing this question it will not unnecessary here to speak to the nature of Cano

what they effect and how oblige.

Canons therefore are no more Laws than authority of the Church is Empire, no not in m ters that are proper for their Canons. certainly they can neither make nor annula Ci Right, nor do they pretend to alter or chang Governments: they exceed their proper bound when they intermeddle in any matters of this ture. But when they do extend themselves beyon their bounds and order, and appoint in any ma ter of the Civil Government; they intended to counsel and direct the man how he should have himself in the use of his Right, which ever man may observe if he please. Their Subjects Populus voluntarius, the Ecclesiastical Courts and Courts of audience in matters that belong to the cognisance, and the Church's word is, He that will hear let him hear.

The Canons of foreign Councils tho' General, tho' we fend thither our Delegates and Proxis authorized

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athorized by publick Instruments, and by connt of Parliament, as has been sometimes done, ave not the confideration of Canons, except re-eived here and allowed by the same Authority,

hat makes the Canons of our Church.

Canons here must have the Royal assent at east to make them Canons, but with the Kings Ment they are void, if they alter or meddle with iny Civil Right or Constitution. If any man is proceeded against in the Ecclesiastical Courts for being contrary in any thing to fuch a Canon, our Courts will grant him a prohibition; if Excommunicate thereupon, award Writs to assoil him to the Bishop, and seize his Temporalities if he do

not conform.

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Nothing can alter Civil Rights or Civil Constitutions but Law, and fuch never were any Canons or fo reputed; except the Decrees of Councils confirmed by the Imperial Rescripts of the Roman Emperors, who by their Rescripts made Laws by the Authority of the Lex regia, by which the people devolved their Right of Legislation to the Emperors: but when fuch Canons were confirmed by the Emperor, they remained but Canons still, the Canons were to be exacted by the measures of the Church and by the Church-men, the matters of such Canons did not employ the Forum; no alteration was made in any Civil Right, but the Church had Authority to require observance of them, under the Censures of the Church.

About the 11th. Century the Pope meditating the increase of his new Ecclesiastical Empire,

(the Roman Empire being now extinct) di fign to give Laws to the World: and to that pose in imitation of the Imperial Roman] Gratian was appointed to compile a body of But accomodated to that defign out of the Go aw W Councils, the fayings of the Fathers, and e en decrees of former Popes, which made that ofa of the Canon Law which they call the Dec mpo to answer to the Digest which was made eriti the Senatus consulta, Responsa prudentum an itor Edicta Prætorum; to which another Book wa ime ded of Decretals and Clementines, made upo lid f Popes Decretal Epiftles, which answered to B. B Codes and Novels which was made up of the ta, dicts, Epistles and Decrees of the Emperors: moi by the Constitution of the Senate of Rome, cal per Lex Regia, by which they gave the power ab making Laws to Augustus, it was established, the ve quicquid per Epistolam statuit, cognoscens decrevi C aut per edictum propalavit, lex esto. And nowth re was such a thing as a body of Canon Law. The b Pope had Power indeed to make these Dear and Decretalia Laws in the Domains of the Church and the Patrimony of St. Peter, in which he was a Temporal Prince; but it was furth endeavoured by him to make them the Laws the Christian World, and thereby to advance pretended Oecumenical Empire, and he did for prevail and advance in his defign, that it was thought that Rome had again recovered the Em pire of the World, and it was faid with too much truth of her upon the growth of the Papal pow --- Quicquid er,

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But tho' the Pontificial as well as the Justinian aw was publickly professed in England before e end of the 12th. Century, for Mat. Paris tells of a Monk of Evesham, Anno Dom. 1196. that suo mpore eorum quos Decretistas & Legistas appellant eritissimus habebatur, earum etiam facultatum auitores quamplurimos instituerat, and from that ime the study of the Cafarean and Pontificial Law lid flourish amongst us, until the beginning of E. . But in all that time, faith Mr. Selden, in his Fleta, gens ipsa Anglicana ac qui in judiciis præerant. morum patriorum (viz.) Juris Communis Angliæ per intervallum illud tenacissimi fuere. A remarkable instance we have of this Nations steady aversion from admitting here either the Civil or Canon Law in the Parliament of Merton, which rejected a Bill for Legitimation of Children born before Marriage in Concubinate, in these terms: Nolumus leges Angliæ mutari, meaning that they would not make Laws conformable to the Civil or Canon Law.

The great Policy that the Popes used to effect their Ambitious design of making themselves Monarchs of the Christian World were: The assuming to themselves the entire rule and Government of Religion; The endeavouring to make every where the Bishops and the whole Clergy, together with the Regulars, dependant upon them by pretending them to be exempt from all Civil Authority

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Authority and Jurisdiction: and by interdic to them the exercise of any Civil Authority flutting them out from all intromissions into Civil Government, and from any interest or pendance thereupon. So far as he prevaile these designs, he acquired an Imperium in Imp and if besides these he could have fixt a Spin handle to the Temporal Sword, and have the Government of secular affairs in ordinea ritualia, his defign had been compleated, a had arrived to a more absolute and exten Empire than that of the Roman Cæfars.

liæ To these purposes the Canon Law prov PA that the Ecclesiasticks were neither to exe fee nor be Subject to any Civil Authority: But ari Policy of the Pope had no fuccess in England gre endeavours of the Papalins herein met without ter fant opposition: and at last they were maded pl sperate by the Assise of Clarendon, where it w declared and enacted accordingly agreeable the Avitæ Consuetudines Regni, that the Billion should be retained and continue to be a part of Government, & exercise Jurisdiction in all Can in the Kings Court as other Barons, as is below observed, and also that the Clergy should sta Submitted to the Jurisdiction of the Kings Com For this purpose it was in that Parliament enach as followeth: Si controversia emerserit inter La cos, vel Laicos & Clericos, in Curia Domini Regi tractetur & determinetur, & also quod clericina ti & accusati de quacunque re summoniti à Justin Regis venient in Curiam Domini Regis responsibil AM bidem, &c.

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And so far were the Bishops and Clergy from erdic ferving that part of the Canon Law that was rity, detrude them from all secular Authority and prission, that they were from time to time hancellors, Treasurers, Keepers of the Privy into ft or raile eal and Judges, and while that Ancient Office Impo ontinued of Capitalis Justiciarius Anglia, to vhomwas committed the Justice of the Kingdom, tho were called Custodes Regni, Vice-Domini Anglia, & sometimes by the abstract Justitia, He lid preside in the Curia Regis, which office was afterwards divided, for there were fustitiarii Angof liaBoreales, & Justitiarii Anglia Australes, this Office was often executed by Bishops as you may fee in Sir H. Spelmans Glossary, in the word Justitie arius. Bishops and Church-men administred the greatest Offices of State & Justice: this was matter of Envy to the Temporal Lords, & they complain'd in Parliament 45 E.3. (as is before observed,)That the Government of the Kingdom had been a long time in the hand of the Clergy. Mr. Selden in his Fleta tells us, that in the times before and after the Assise of Clarendon, Mos fuit Judices Regios ex genere hieratico, veluti Episcopis, Abhatibus, Decanis, id genusaliis, constituendi. And it is provided by 28 E.I. Cap. 3. That if a Clergyman was a Judge of Assile, another should be joyned in Commission with him to deliver the Goals; which was to the end that the Ecclesiastical Judge might use that liberty which was indulged to him by the Assise of Clarendon of not pronouncing the Sentence; for it must be observed

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ved that by that Statute a Clergy-man might Judge in a Goal-delivery; for that a Laick was the provision of that Statute to be join'd to in Commission, and moreover Records of Plea the Crown are to be found, purporting themso held before two Judges, whereof one a Clerk ter this Law, which could not possibly have if the Clerk had not been in Commission.

Besides for after Ages it is well known that the great Officers and Ministers of State and stice have been always intrusted with the convancy of the Peace, are in Commissions of Peace, and Commissioners of Oyer and Terms for judging capital Causes; so that the conformation of the Assiste of Clarendon doth assure that the Canon Law that prohibits Clergy me being Judges in capital Causes, was never received here or became the common Law of England.

Besides what regard our Clergy had of the anon Law, what opinion they had of the Right question, and how far the Laws did intends prohibit the exercise of it; And that such right was used and exercised, will appear by the anon of Toledo, Concil. Tol. 11.c.6.f. 553. and the anon of Lanfrank, Spelmans Concil. 2 vol. f. 11. the were made before the Assise of Clarendon. The of Toledo is this. His à quibus Domini Sacrament tractanda sunt, judicium sanguinis agit are nonlice ideo magnopere talium excessibus prohibendum est, ne qui præsumptionis motibus agitati aut qui morte plestendum est, sententia propria judicand præsumationis fententia propria judicand præsumationis motibus agitati aut qui morte plestendum est, sententia propria judicand præsumationis motibus agitati aut qui morte plestendum est, sententia propria judicand præsumationis motibus agitati aut qui morte plestendum est, sententia propria judicand præsumationis motibus agitati aut quid

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nant, aut truncationes quaslibet membrorum quiuslibet personis, aut per se inferant aut inferendas Was recipiant. This being a Foreign Council, this tol Canon carries not with it the Authority of a Plead Canon with us; only we may observe, whatmto ver the Opinion of that Council was, that it erk was not convenient (for licet can have no other sence here) for Clergy-men agitare judicium Sanguinis: Yet this Canon prohibits only he pronouncing the Sentence by themselves or others. I am fure, that by a positive Law; as this Canon must be, so far as it participates of the nature of a Law, nothing becomes unlawful, but what is forbidden, whatever the reason be of that Prohibition. That of Lanfrank follows thus; Ut nullus Episcopus, vel Abbas, seu quilibet ex Clero hominem occidendum, vel membris truncandum judicet, vel judicantibus suæ authoritatis favorem accommodet. This may be a Canon for all that I know; but I suspect, it had never the Royal Assent to make it so, it not being likely, that the Conqueror would difcharge the Bishops from those Services of the Crown, which he had so lately obliged them to, by his tenure; but furely it was never intended by this Canon, that the Prelates, and great Abbots should, or that they did depart from their Royal Franchises, and not make their Officers for administring Justice according to their Authorities in their Charters of Liberties and Priviledges: For the words of the Canon, Vel indicanjudicantibus suæ authoritatis favorem accommeda if they signisie any thing more than what we

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low must found to that purpose.

But I suppose the Gentlemen that appear against the Bishops, had rather than affirm against the known practice of all Ages, bear tent to agree, that this Canon did only into to prohibit their pronouncing, or encouraging or promoting the Sentence of Death, or Mu lation; and indeed this was all that truly co be pretended to from them, for component themselves decently with respect (as the 0 nion of those times was) to their Function which is expressed to be the Inducement that Canon of Toledo, as it was the only avo ed Reason of all others, that is, that it did m become (as they thought) those that admin stred the Sacraments, which were the Seals of God's Pardon, to pronounce an exterminating Sentence of Life and Member. Though the might have a farther Secret purpose therein, i carrying on the Design of a Church-Sovereign ty, by imbodying the Clergy, and dividing them from all Secular Dependencies; but its was not always to be owned.

Neither is it an agreable Employment to apper fon who pretends himself a Protestant, to use these ill-designing Canons, as a pretence to divel the Bishops of those their Legal Rights which were so prejudicial to the high Growth of these pal Power, upon any pretence what soever; or to

go about to deprave the Reformation, as if the true Christian Religion would not allow to the Bishops, Honors and Trusts as great as they now enjoy by the Constitution of the Government, who are the Chief Ministers of it which to is a Religion that makes men wife and good. The Religion of the State, and is the greatest Support of it, and reciprocally this Religion it self, is honored, assisted, and greatly advantaged, for obtaining its ends by the Honors, and the place at present appointed to them in the Government.

But it is deplorable to mounty and fet upon so bad a Design, that he should be therefet upon so bad a Design, that he should be therefet upon so bad a Design, that he should be thereto displace them, and degrade them by Popish Canons, that when they were made, did not oblige, were never observed, and can no more bind our present Church to observe them, than the Fathers of Toledo, or Lunfrank, and his Suffra-O gans and Clerks, can be blam'd for not being agreable to the Canons that have been made fince the Reformation, or hereafter shall be made fince the Reformation, or hereafter shall be made by our Church, in any after Age of the World.

But there are two Canons yet behind, which have been mentioned in this Controversie, which we will likewife take notice of; or we shall have said nothing; though I almost despair, that any thing will be a Satisfaction to such Opposers as this Right hath met with-

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The first whereof was made by Richard, And bishop of Canterbury, Anno Domini 1175, 21 H. 2. about Eleven Years after the Asset of Clarendon, in these Words, as Hoveden, p. 10 and Gervas. Dorob. relates them, His qui in surfaciones constitutis sunt judicium sanguinis agui non licet; unde prohibemus ne aut per se membron truncationes faciant, aut inferendas judicent: a surface surf

aut Præpositi secularis officium.

The other was made Anno 1222, about years after the first, which is to be found Linwood, p. 146. among the Constitutions Stephen, Arch-bishop of Canterbury, as follow Præsenti Decreto statuimus ne Clerici benesicia aut in sacris ordinibus constituti villarum proce ratores admittantur, viz. ut fint Seneschalli a Ballivi talium administrationum; occasione quant laicis in reddendis ratiociniis obligentur: velim dictiones exerceant seculares, presertim illas quin Sanguinis judicium in locis sacris tractatur, in El clesia, viz. aut in Cæmiterio. Authoritate qui Concilii districtius inhibemus ne quis Clericus m ficiatus vel in Sacris Ordinibus constitutus litta pro pæna sanguinis infligenda scribere vel dida presumat, vel ubi judicium sanguinis tractatura exercetur intersit. Noverint, enim hujusmdi Ecclesiastica indignos protectione cum per est Ecclesia Dei pertalia presumpta scandalum gent retur.

Upon both these Canons, we observe, first, that the Pope's Canon-Law had not obtained in England: For then there had been no need of these Canons; or however their Denunciations and Censures would have been the same: That the Inhibition is repeated by a Second Council, but in milder Terms, signifies to me the Continuance of the thing prohibited; and that it was so much in use after the first Canon, that the second Council thought sit rather to direct and admonish by their Canon, than to pronounce either Anathema's, or deprivation

against those that break that Canon.

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Secondly, That neither of these Canons extend to Bishops; not the first, not only for that I question whether Bishops can be intended in fuch general words, In Sacris Ordinibus constituti: But because the Denunciation of the Canon cannot have effect as to them, no Ecclesiastical Authority can depose a Metropolitan. The Second cannot by any Construction extend to them; for Clerici beneficiati, does not mean them; and that which comes after, aut in Sacris Ordinibus constituti, cannot ascend in meaning, and intend the Bishops, especially in a Canon Law, which we must suppose penn'd with special Care and Observance of Decence and Reverence to that Order.

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Now, to confider them apart, I find the agreable to, and to prohibit no more than wh our. Arc the Bishops (if here meant) are licenced priviledged from in the Affize of Clarenda not thoi And to intend more, is unreasonable, when it And made in time so near to Thomas of Becket, that Par Fare could not be at that time forgotten. farther, we must distinguish between the Pres in I ble, which contains the Reason and Inducement of a Law, and what is for that reason prohi ted: For let the Reason be as large as it w yet the Law is no other than what is enjoyed Reason makes no Law, but the Legislators Reasons which they may tell us if they please though the Nature of Canons requires, the they should. The Preamble of this Canon, was an opinion taken up amongst some of the Clergy, wiz. Non licet his, qui in facris or dinibus confituti judicium sanguinis agitare unde: (saith the Canon) upon which it proceeds, Prohibemus m aut per se membrorum truncationes faciant, (a very fitting Employment for a Bishop) aut inferenda judicent; and after all this, we have still our of Answer, upon which we will ever infift; it is but a Canon, and can make no Alteration in the Rights of Government.

For the' Gervafius Dorob. tells us, In his Concilio, ad emendationem Anglicanæ Ecclesias sensu Domini Regis, & primorum omnium Regu hæc subscripta promulgata sunt Capitula; yethe Canons of this Council are not Laws: For that

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whour Historian tells us, it was convened by the da Arch-bishop, and so only a Provincial, but he does not tell us of any Parliament then held, or that those Canons were confirmed in Parliament. And the good liking of Great Men out of Parliament, will not confirm, nay not justifie the Canons, if they cannot justifie themselves in Parliament. Besides, that these Canons were not made into Laws, we will offer two Reasons:

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fince taken; and that is this, Nulli liceat Ecclesiam nomine dotalitii ad aliquem transferre, vel pro presentatione alicujus personæ pecuniam velaliquod emolumentum pacto interveniente recipere: quod fi quis fecerit & in jure convictus vel confessus fuerit ipsum tam Regia, quam nostra freti autoritate patrocinio ejusdem Ecclesiæ in perpetuum privari statuimus; which was never, most certainly Law.

Secondly, If this had been a Law, the other Canon before-mentioned, made by Stephen, Arch-bishop of Canterbury, was idle; nay, presumptuous, for offering to derogate from a Canon, made a Law about 47 years before: But however, Canons confirmed by Law, remain but Canons still; and the Breach of them not punished as the Breach of Laws, nor no Innovation made thereby, upon a civil Right; of which before and after more,

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As to the Second Canon; we observe dutiful this Canon in the Stile of it be his it felf towards the Civil Government. Clerks should not exercise Jurisdiction Judgment of Blood is to be given, under foft word Statuimus. That they should no teras pro pæna sanguinis infligenda scribere. is, fign an Order for the Execution of all demned Man, or be present at the Sentent under the districtius inhibemus. But the of this, is not declared to be a Sin; he the contravenient to the Canon, is not the to become irregular, to be punished by his perior, to incur Excommunication, or Censure, the Clergy are not declared by Canon to be incompetent Judges. It only clares them unworthy of the Protection of the Church; the meaning of it is, Judge m ke ye be judged: If you judge the Laicks, the will judge you. This is the Scandal by whi the Privilegium Clericale will be loft; Som upon the whole matter this Canon is but h vice and Counsel, and offers reasons wh Choice and Approbation, rather than a Con mand, under the Authority of the Church a Council. But let it be what it will, if Canon had been most peremptory in its Pro bition, and had lighten'd and thunder'din Denunciations, it would have been of no lord to alter the Government, or discharge a July from doing his Duty.

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But this is farther to be duely observed, that his Canon could not be broken if the Law had beh not been otherwise than these Canons direct; and herefore these Canons produced by our Adversaries, are the greatest Testimonies to the Right we defend, and of a practice agreeable thereto. Doth not the Canon suppose, that a Beneficed: Clerk, or one in Holy Orders, was sometimes in Commission for judging in Capital Causes? For certainly the Canon did not prohibit them to murder, or enjoin them not to write Letters to fuborn men to kill. What then can be the meaning of the Canon but this, supposing a Beneficed Clerk to be made a Judge of Life and Death, to assist in a Commission of Oyer & Terminer, or Goal-delivery, that he should be enjoyned not to pronounce the Sentence, or to fign the Order or Calendar for Execution. But if he were not a Judge, how possibly could he sign an Order for Execution? By the other words of the Canon, Nec intersit ubi judicium sanguinis tractatur; he can be forbidden onely to be present and assisting as a Judge or Officer at the pronouncing of Sentence: for it can be no fault sure, nor ever was intended by any Canon to be made one, for any Clerk to hear a Court pronounce a Judgment of Death or Mutilation, or to fee a Malefactor executed.

What therefore can be more evident, than that the Bishops did withdraw, not for want of Right of Session, but they pretended the Canon because

because they did not like the Causes? But OXIC ther, that nothing more than what we ella shewed was understood to be done in that P testation, by those times (they must be allo arlia at least to know their own Opinions) doth pear; for that notwithstanding the Prote tion of the Bishops aforementioned, the Council of the Kingdom did not think the thority of a Parliament when the Bishops This Opinion with absent unquestionable. not go about to maintain, but this we cond that there could never have been fuch and nion, if the Bishops had been denied Right Session in Capital Causes in that time. vest

CHAP. IX.

He Commons of England in the 21 R. pray, that the Bishops might makether Proxy; which they did thrice in that Parliament, once by Procuratory Letters to Sir Thomas Pen, as is before recited; and afterwards Williamla Scroop Earl of Wilts was made their Procurati, and a third time the Earls of Worcester and Wills were made their Procurators, in the matter be tween the two Dukes of Hereford and Norfolk.

That it may the better appear, that the Bishops were virtually present by their Proxy, # ought to appear that they were allowed to make

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roxies, and that the Lords Spiritual did so as ell as the Temporal Lords. The first mention Proxies that occurs in the memory of our lo arliaments is in the Parliament of Carlifle under . 1. and that is of the Bishops Proxies. The vords are these; Quia omnes Prælati tunc plenaiè non venerunt receptis quibusdam procurationius Prælator. qui venire non poterant adjornantur. nd in a Parliament held at Weminster, under Jurham and Carlifle remaining upon the De-ence of the Marches of Scotland, are severally ommanded to stay there, and in the Writthis Clause was added to both of them, Sed Procurat. vestrum sufficienter instructum, ad dictum diem & locum, mittatis ad consentiendum his quæ tunc ibidem per prædictos Prælatos & Proceres contigerint ordinari. Though generally Proxies were admitted to both Spiritual and Temporal Lords, yet when the business of the Parliament was extraordinary, the Writs of Summons both to the Prelates and Barons had a Premonition, that a Proxy should not be allowed, unless they could not possibly be present, dors. clauf. 6 E. 3. m. 36. claus. 1 R.2. m.37. 2 R.2. m.29. Nor was it unusual with the Prelates to make such their Procurators, who were no Members of that House. In that Parliament of Carlifle under E. 1. the Bishop of Exeter sends to the Parliament Henry de Pinkney Parson of Haughton as his Proxy. Bishop of Bath and Wells sends William of Charle-

ton a Canon of his Church. In the Parlian 17 K. 2. the Bishop of Norwich made Michael geaux Dean of the Arches and others his Pr rators. In the same year the Bishop of Du his Proxies are John of Burton Canon of In and others. In the Statute of Præmunire 161 cap. 5. it is faid, that the advice of thell Spiritual being present, and of the Procur of them that were absent was demanded. making of others then Barons of Parliament xies, is not without President likewise case of Temporal Lords. Lit. Procurator. 4 H. 5. Thomas de la War gave his Procum Letters to John Frank and Richard Hulme (So that it appears, that by the Law of Pa ment the Proxies of the Bishops in the 21th R. 2. were legal Proxies; and confequently Bishops there virtually. Besides that, thelay fulness thereof doth appear, for that it was quired of them by the Parliament, that the should make their Proxies, and be present their Procurators, for this reason, lest otherwi the Proceedings in that Parliament should void.

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CHAP. X.

wholly repealed by 1 H.4. but that was for good reason indeed, because that Parliament of 21 R. 2. had delegated their whole power to a sew of their number, who finally without any resort back to the House made and past Laws.

But did ever any man before the Octavo argue at this rate, that because there is one error in a case for which the Judgment is reversed, that therefore there was nothing in the case legal and well considered. And therefore how unreasonable and false this way of arguing is, and that it is disputing against fact, we shall further shew

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For a probable Opinion still continued of the necessity of the Bishops sitting, which implies a clear Recognition of a Right; for in the 2 H. 5. the Earl of Salisbury petitioned the House to reverse a Judgment given against the Earl his Father, Anno 2 H. 4. the Error assigned was the Absence of the Spiritual Lords. The Case was much debated, but the Judgment assirmed as we allow it ought to be, but we produce it as an irrefragable Testimony of the Bishops Right to sit: for if that had not been allowed, there could not have been the least colour in the case, nor matter of debate.

CHAP.

CHAP. XI.

But the Actual Exercise of the Billing ing a Right in their own Persons (the bould whatsoever is done by a Deputy, is done ind. the Right of him that makes the Deputation The every body knows) was for some time distributed ount nued (tho' their Right in that time was moll that lemnly owned and recognized) yet in 28 H on one we find them re-continuing the Exercise of trice Right and Authority, and in their own h it she should be sh of Treason by the Commons, for that he had nave sold the Realm to the French King, and had large fortified Wallingford Castle for a place of Res had suge. The Impeachment of High Treason was her brought from the House of Commons, by several Lords Spiritual and Temporal, sent thither the by the King's Command; the Ninth of March, Bithe Duke was brought from the Tower, into Performent of the Presence of the Vicential Pr the Presence of the King, the Lords Spiritul In and Temporal: The Impeachment was read un to The Thirteenth of March, he was fent 1 for, to come before the King, the Lords Spirit tual and Temporal, to answer to his Charge, which he did. On Tuesday, the Seventeenth of March, the King fent for all the Lords Spi-

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ual and Temporal, who were in Town : hey are named, two Arch-Bishops, and thiren Bishops, besides the Temporal Lords, who ing assembled, the King sent for the Duke. here was no Judgment given by the Parliaent, but he submitted to the King, and the ing gave him Penance; which was, that he how would be absent for Five Years out of Engind.

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The Lords Spiritual and Temporar, ount Beaumont, declared to the King, that this hat was so decreed, and done against the Perpoceeded not by their Adon of the Duke, proceeded not by their Advice and Council, with this Protestation, that the found not be, nor turn in Prejudice, nor Derogation of them, their Heirs, ne, of their Successors in time coming; but that they may have and enjoy their Liberty and Freedom, as a great their Appellors, or Predecessors ad largely as ever their Ancestors, or Predecessors had and enjoyed before this time. Observe here, that the Lords Spiritual were present at every Motion of this Cause. This Cause was thrice before them, no exception taken to the Bishops being Judges. They could not sit by Permission, without Right; if the Bishops had no Right to fit, the Proceedings had been certainly erroneous: For though one Judge's Abfence (if there be a Quorum) will not vacate a Judgment; yet if one fit in Judgment, that is. Judgment; yet if one sit in Judgment, that is. not an Authorized Judge, the Proceeding is certainly erroneous and void. Can any man be-

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lieve, that the Government should lose it se forget its own Establishments in the highest or cerns? We may as foon believe that a man m forget his own name. One positive Act of & fion fignifies more than 100 Omissions; foris had not been well understood, that the Billion had a Right to fit in Judgment in Capital (fes in Parliament, they could never have be admitted; they would never have presume endeavour it. But with false Logick and alim Reasonings, and dislike to the Order, itil come an Opinion in this Age, because for times the Bishops absented, that they have Right.

But we have one thing further to add, declares an inherent Right in the Lords Spiring to the Authority in question; and that is a Opinion of the Judges 10 E. 4.35. which fays that the Lords Spiritual in case of a Tryal of Temporal Peer in Parliament shall make a Pro curator; for then it feems an Opinion was reco ved, (which was error temporis) That it was in decent for Bishops to sit in their own persons Judgment in such cases. But they themselves best Judges of what is indecent and unbecoming their Order; for no man is obliged to any man but himself, in the matters of Decency, and the measures that make things decent or indecentar very mutable, as changable and mutable as Costoms, Fashions, and Opinions. Besides that, there is nothing that is very valuable, and is at great great concernment, but can and ought to fet aside and supersede the consideration of Decency.

CHAP. XII.

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DUt to complete our Evidence, I will add the consideration of what remains unquestionably of the Right of the Lords Spiritual, which feems to me to be in parity of Reason with the Right now in Pretence, and that is their Right to be authoritatively present and assisting at passing Bills of Attainder, which the Bishops always exercised as the Folio saith, though he will not think it allowable from thence to infer, that they have rightful Authority when that House doth proceed judicially to Condemnation. But I desire to be informed what difference there is between condemning a man by Act of Parliament, and by Judgment in Parliament. If the death of the man be onely considered, it is as much against the Canon to condemn the man one way or the other. It's causa & judicium sanguinis, and death follows. Nay, to condemn a man by Bill of Attainder is more against the reason of the Canon, than the condemning a man judicially; for the condemning a man judicially is ex officio Judicis, but a Bill of Attainder is an extraordinary use of the Legislative Power Power to a purpose, which was not defigne e its Institution. Such an Act is not explicit Legislatoris, but the using of the Absolute Por Tit of the Sovereignty upon Reasons of State. H Att one would think if the Canon had any contino ration, any obligation, it should restrain the cess
shops from meddling in such Legislations. I the
wilegia ne irroganto was one of the Lawson me twelve Tables.

But (if I do rightly understand) the of why Bishops did more frequently, and win La pretence of scruple or objecting the Canon, sta in the Bills of Attainder, was for this re 33 That the weightiness of the Affair, the Fo nature of the Proceeding, the extraordin an use of the Legislative Power, which can be ranted onely by extraordinary Reasons, represented their Presence, and put that little power but of the Canon out of countenance, it could the with any faith to the Government be then m much as mentioned for an Excuse by the th ihops.

And this I will fay, that the Canon hand more right of restraining the Bishops in Judice to Proceedings, than in the Proceedings upon of Attainder. That it hath not done foism fessed in this, and therefore it did not de junt

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so in the other.

The Folio Author hath found out a very extraordinary Reason why Bishops are necessary to Acts of Attainder, (but this he faith molino at de drawn into an Argument, for the Bishops Right of Judging and that is, because Rights, Po Titles, and Interests, are made sorfeit by Acts of Attainder, which were not forseitable at Comon non Law; and for the doing of this it is nethe cessary there should be a concurrence of the three Estates to bind all Rights. This Argument supposeth, that private Acts of Attainder did not always conform themselves in the matter of Eorfeitures to the severity of the Common Law, or general Statute Law: which is a minute state of 26 H.8. c. 13.55 at 33 H.8. c.20. private Acts of Attainder made no Forfeitures, but what the Common Law made; and fince the Statutes of 26 H.S.c. 130 6133, His. not exceeded these appointed by that Statute, but have often times gone less. And therefore the Bishops were not present for the reason of making Forfeitures larger, and of more things than the Law at the time being made forfeitable, but of common duty, especially in all these matters of an extraordinary nature or difficulty; to affift as Judges and Councellours in that House. And to this that I now say, all the Acts of Parliament of private Attainders that I have feen, and they are not a few, are agreeable. I believe what he hath faid in this matter is not grounded upon any observation, but he was willing to find out a Reason for what he had unadertaken to prove, and to offer it without try-K 2

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ing of its truth. Besides, whatever can Law, can be a Law without them, and if are absent.

CHAP. XIII.

But I must take notice that we have me beyond what is necessary, to maintain Lords Spiritual their pretence of Right to of the Earl of Danby's Pardon, which is the sent case, and gives the occasion of this spute. And here I desire the Reader to rember and observe, what was heretofore don't the Bishops in case of Heresie. The Bishopin Consistory convicted a Heretick, and did not imagine he incurr'd the Canon pretende (though the delivery over to the Secular Ar and burning of the Convict if he did not cant, was intended assuredly to follow) been he did not award the Execution, and given final killing Sentence.

How then can the Canon (if it was a law it is not, nor obligeth any man but he than be obliged) lay any restraint upon the Billion in judging of the Earl of Danby's Pardon. It is they disallow his Pardon, and reject his plant is not to be therefore condemned, (thoug perhaps his Condemnation may follow, asburned doth the Conviction of a Heretick;) but he

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t ipso fatto, and merely by rejecting his Plea of rdon, condemned. For observe, I pray, no man is condemned, or cast in any Suit, beuse he doth not make a good Desence, but upon the sufficiency of the matter whereupon he s charged. Besides, that it is not without Precedent, that a man hath been tried after a Paron pleaded and disallowed. This every awyer knows to be so, that if a Plea is pleadd to any Declaration, upon which the Plaintiff demurs, if the Plea be ruled a bad Plea, the Defendant hath liberty to take exception to the insufficiency of the Declaration. So that Judgment is finally and truly given upon the Declaration and Charge, because there is a good cause of Action, and not because the Desendant hath made a bad Pleas vidire in se

So that the Bishops may judge in their own persons of the validity of Pardons, without being contravenient to the Reason of the Canon so much talked of is evident; for that the Judgment upon the Pardon is not the sinal and killing Judgment. The Folio hath surnished us with an Authority for the same, out of an ancient Manuscript Chronicle in libro Mailrosso he calls it, wherein he saith, the Prelates are said to have given their Opinion in 21 R. 2. for the revocation of certain Pardons of the Duke of Gloucester, Earls of Arundel and Warwick, which were granted in 11 R. 2. and in the Parliament of 21 R. 2. repealed. And though K?

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the Chronicle faid, some blamed the Bishop thought that they had incurred thereby in larity. That dothinot at all prejudice on him nor abate the force of the Testimony, that matter of fact gives to its to company

We referved it to this place to add, that intention of the Affize of Clanendon was, w bounds to the Encroachment of the Papal Po and in this matter to declare, how far the shops might if they pleased observe the Law, or rather themselves, and what was the then decent to their Order So according Print in Gervafius, and therein he differs Matth. Paris) it is, Quousque judicio pervenn ad mutilationem membrorum vet mortem; wh further clears the meaning of that Law to that the Bishops were thereby excused not all gether from Capital Caufes, But onely when was proceeded for far in fuch like Caule, the Judgment was to be pronounced, which wh the Bishops had nothing to gain say, they migh depart, and leave Sentence to be pronounced the House. Only of T

But we cannot after all this allow the Anno of the Folio, to have so little sense, as with good conscience to say, that he who camperhaps by reason of his circumstance, and consideration of Indecency, execute a thing his own person, therefore cannot do it by another, no more than he can authorise one manious ther another. Thus he saith fol. 20. when such

his Gentleman cannot think it as fit for a Judge to be a Hang-man, as to fign a Kalendar for the

Execution of the Condemned Prisoners.

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But the Octavo is somewhat surprizing in this matter: For he doth affirm, That it is not lawful for Bishops to vote in any Question preli-minary and preparatory to the Sentence of Condemnation, when such Sentence follows, and the matter preliminary is necessary to the Process. This he proves by a Logick Rule, Causa Causa, est Causa Causati; one of Sthalius his Axioms hath turn'd round the Head of this Gentleman. I find few men can bear Axioms, Maxims, and Sentences. There are none speak so much unnatural Non-sence, as they that use them most. May not several men, I pray, do several parts of an affair; and yet he that doth the first part, is no ways the Cause of what another man doth in the fecond and third place? Is the acting the first part of the Play, the cause of acting the last; Or, is the laying the Foundation, the Cause that lays on the Roof? Is the Jury the Cause of any more than their Verdict? And doth not the Court give Judgment by their own Authority and Caufality?

If men would speak by Nature, and according to first Notions, and were not so full of second Notions, and Universals, we should not have so many Errors, Mistakes, and Confounding Opi-

nions in the World.

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But this we complain of as too fevereing Octavo; that when he had confounded us w his Causa Causa, & Causati, he would renden ridiculous with a Story of a Friar, out of Chauch Bisho

That would of a Capon, the Liver, of a Pig. the Hea But would, that nothing for him should be deal

This indeed was a fine piece of Wit in the Pop but translated hither by our Author, is anim pid piece of Malice. His Design sure in this, w to enter the Bishops amongst Chaucer's Frian and then the Learned Readers of Chaucer, (ast im wifely imagined) would be very conceited un them; and apply all his pleasant Satyrs, again

the Friars, to the Bishops.

But for the farther Evidence of the Bilhops Baronage, and their Jus paritatis, it would not be impertinent here, to add, That the Names of Barons, Peers, Seniors, Grants, have been attributed to the Lords Spiritual, in all times, in Authentick Histories and Records. much as a Nominal Argument, is not a very inartificial Topick in such a Cause as this. It fides, that this will destroy the very strength of our Adversaries; which lies in this, that they will not allow Prelates to be comprehended in the Name of Peers, Grants, and Baron, And that where the Records doth not exprely mention Prelates, they will conclude, they were not meant or intended to be present: But den

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But the Collection which was made for this surpose, shall not trouble the Reader, because n two Books fince Printed, in Defence of the Bishops Right in question, this is abundantly performed. Besides, that it is a very precarious Conclusion, that our Adversaries make, and without argument: For they ground themselves herein, upon a most unreasonable Postulatum, viz. That Titles do not belong to perfons for whom they were made, and to whose Character they agree; and that Words do not defign the things which they were made and imposed to signifie.

CHAP. XIV.

Ow we shall proceed to perform a necessary piece of Justice to the Prelates, as well as a Right to the Government, to recover its true Constitution, from the Prejudice of Modern Ignorance, to declare and manifest, that our Government doth confift of three States. the Lords Spiritual, and Temporal, and Commons of England.

These do make the Great Council of the Kingdom, and minister to the King, Council and Auxiliaries; over which the King doth prefide as the Great Superintendent, and Mover

of this mighty Machin.

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The consequence of which is, that the Bill cannot be detruded from that place they be the Constitution of the Government, for a no Government can be legally or by any law Power changed, but must remain for ever a established. And it can be no less than I son of State to attempt a change, no Author in the world is competent to make any attion.

The Princes of Christendom, after they to themselves the Election of Bishops, who a natural right of the Sovereign Power bean Christian, they soon observed the advant that they might make by advancing themon greatest Secular Dignities, Governments, w Trusts; and did accordingly advance them an equality, if not to a superiority, to the high est of the Secular Nobility; gave them Du chies, Marquisates, Baronies, and rich Endor ments, and erected that Order into a successi Nobility: Another fort of Nobility from the of the Lay Princes; concluding that they how be better served by men of their own choice and approved worthiness, (who had also who advantages over the People, than those that Temporal Princes and Lords had, by that verence they paid to their Bishops, and the thority and Power that they had over them the virtue of Religion) than by the Heredian Princes and Nobility, who did not always anye to the virtue of the original Ancestors, and first stock.

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Besides that, Religious Kings and Sovereign Princes did by advancing Bishops intend to do great advantages and honour to Religion.

But withal they did not divide the Bishops thus advanced, from the Secular Princes and Noblemen in Councils, for then they had loft their defign. The Bishops could not have had any direct influence upon the Councils of the Nobles and Seou lar Princes, nor have tempered their Debates with an excellent Charity and firm Loyalty and other Virtues which belong to their Character. It would have made trouble, diffraction, and impediment in the Affairs of Princes, emulation and strife and faction between the Ecclesiastical and Secular Orders and several other mischiefs and great inconveniencies would have enfued, if they had been divided and feparated in feveral Colleges, and had had in confequence thereof a Negative upon each other, as they then of necessity must. But by uniting both Orders into one Council and Assembly, diftra-Ctions in Councils and impediments to the Affairs of Princes are avoided. And we are affured of a more wife, as well as an unanimous and more authoritative Refule in all Councils and Debates; which if the Octavo bad duly confidered, he would not have depraved and disparaged this wife Constitution, by comparing it to a nell of Boxes, in the O

They were therefore, for these great Reasons, both Spiritual and Secular Lords united in the

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great Councils of Kingdoms, and these two of Nobles Spiritual and Secular, became in two States, which together with the Representatives of the People the third State, made the Paliaments and the Diets and Conventions of State under which Names the great Assembly which we call a Parliament, in the several Sovereignth of Christian Europe hath respectively passed.

This hath been observed by the most learns Onuphrius: Postquam verò juris imperii facta ela rundem Prælat electio quemadmodum & ceteriPin cipes seculares Imperii, tum Cæsares qui de Religim bene merere volebant, sine Imperii tamen præjudin cæperunt Episc. & Abbates, ob Religionem tanqua potiora Imperii membra, præ cæteris Laicis Princis pibus honorare, profana ditione & ingentibus opi bus bonestare, Arces, Oppida, Vrbes, Marchia, Ducatus, Provincias, Pedagia, Telonia, Vectigalia, Portaria, & multa alia quæ Imperii propria erant, Episcopatibus concedere, quæ vel ex sus propriis bonu quæ ad Imperium pertinebant, vel ex alienis feudu erant. Nam Laicis Principibus fine legitimo have de mortuis, eorum Provincias, quæ beneficiariojun ad Imperium pertinebant, non aliis amplius Lais Regulis, sed Episcopis concedebat; at que hac ration omnes Episcopatus & Abbatias Italia, Galliarum, & Germaniæ, imò totius Orbis Latini, & denique ipsum Pontificem Romanum, ex pauperibus ditissmas, maximos Principes fecerunt, & ex eis sciliet opibus, quæ antea Imperii juris erant, in nulla re propterea Imperialia jura minui existimantes; quippe quippe quod certi essent eos omnes Prælatos a se designandos sore, & non nisi jussu suo, & voluntate

Sacerdotia ipsa obtenturos.

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Nicholaus Cufanus, lib. 3. de Concordia Catholica, cap. 27. attributes this Policy to Otho Secundus, who saith he, Unico gaudens filio & multis regnis, cogitans difficile fore absque maximo labore, tot regna in pace aliquamdiu servari posse, insequens vestigia Avi sui Henrici Primi, & Ottonis Patris, suum cogitatum ad res ecclesiasticas appulit, considerans multa jam Religiosis locis per præsentes Reges donata, summa pace gaudere, quia verecundum erat Deo dicatis vim inferre animo ponderavit Ordinationem factam Synodo Romanæ Ecclesiæ, de qua 63. Dist. In Synodo. Per quam perpetua dabatur potestas Imperatoribus, & Romanum Pontificem, & Cunctos sub Imperio Episcopos investiendi, vel saltem eorum consensum semper concurrere debere celebrata Canonica Electione, ut 63. Distinct. NOS SANCTORUM. Unde hoc ponderans credidit, perpetuis temporibus Imperio subjectis pacem dare posse, si temporalia Dominia, tam Romanæ Ecclesiæ, quam aliis adjungerentur, cum certi Servitii observatione, tunc enim cultus Divinus augmentaretur, & Religionem in magnam Reverentiam exaltandam credidit quando sanctissimi magnæ potentiæ aliis Principibus intermiscerentur: non posse tunc quosque voluntate in peccatis uti. Nulla publica sperabat unquam peccata Captorum & depopulatorum agrorum, & communem pacem turbantium; incendiariorum;

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& consimilium posse nutriri Ecclesiastica Sacri ræna testate potenti & valenti resistente: etiam prad & pauperum oppressores, qui particulari regin præessent, fic corrigi posse affirmabat, ut fic al Tyrannica Oppressione populus in Libertate vin posset. Imperio etiam tranquillissimo non dubita hanc Ordinationem esse utilissimam, quando annua servitia, & præstimonias cuilibet Ecch juxta quantitatem temporalium indictas Sin Imperialis manu-teneretur, ac etiam multoni Imperii Potentia ex hoc appareret, quod illismi bus Dominiis ita Ecclesiis traditis, nullu, per Imperium & absque Successione, percipi per Who is defirous of more to this purpose, w see Sigonius, de Regno Italiæ.

Bishops were made Dukes and Counts France, and also Peers in France; and about this time, out of the Princes, Dukes and Counts the number of 12 were selected by the King of France, and erected into the Title of the 12 Peers of France: by which Dignity, the became the Chief Councellors, and Director of State. These twelve being chosen, believe their being Peers in matters of Judgment, in the Old Parliaments, were Peers also in themnagement of the whole Kingdom; and while their Greatness held, were therein so Powerful, that they added a Taste of Aristocracy to that great Monarchy not difagreable to the Titlethat our Peers assumed of being Pares Regis, and has Ving a Power, Franum apponere Regine fitinf franata acri rædi egin

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Bracton, f. 107. but he and his Law both are ntiquated.) Of these, six were Lay, and six were Ecclesiastical; but the Dignity of Pair, is supposed in these Bishops, not as they are Bishops; but as being Dukes and Counts also; that is, in the first three, viz. Rhemes, Laon, Langres, as Dukes, and of Beavois, Chalous, and Noyons, as Counts.

These twelve Peers of France had such a Power towards the Ancient Kings of France, as the Ephori of Sparta, and the Justiciaries of Arragon had towards their Kings. They were obliged to exercise that Power with Care, and they did exert it towards their Kings. What they did agreable to the Power assigned them in the Government, was lawful and just; nay, their bounden Duty. But certainly, the Exercise of these Powers was against no Command of God: For God makes no Government; nor obligeth us to obey any, but what are made by Men: The Government it felf is its own Measure. It's no Objection against the Lawfulness of any Government, that it's inconvenient, if they like it, notwithstanding, whose Government it is. But this Constitution was of advantage to Royal Families, in that it made a kind of Entail of the Crown upon their Families, and preserved the Monarchy and its Descent: And besides, had this farther Conveniency, that it was under them impossible for a Nation, or Kingdom to be undone in a trice

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trice for a Caprice of the Prince, or defin to make a Fortune for some Up-starts.

For the Sake of Mankind, it is to be early defired and prayed, that such as they derive no Honour from their Ancestors, leave none to their Children, that them may survive their Honors, and leave not of their Fortunes to their Children, but they themselves could deserve, viz. Hat Infamy. All Usurpation and Encroachman Power is to be opposed where it can be lawn as the greatest Mischief, and the Ministers of Designs hated and detested as the most permit and loathsome Vermine.

CHAP. XV.

But to return, agreable to this Policy of & vereign Princes, who had the Donation Bishopricks, of advancing Bishops to the hight

fecular Dignities and Trust.

William the Conqueror did create Bishops in to Barons, and exacted the Services and Councils of Barons in the Great Council of the Kingdom, by putting their Lands under Tenure by Barony: he gave them no new Endowments but as a Conqueror, he confirmed their Accent Possessions, under a new reserv'd Tenure, and annex'd to their Order, a Secular Hoof,

fuccessive Baronage. Since the Conquerour he Title of Baron took the place of that of Thane; which was likewise a Feudal Honour in the Saxmes time. By William the Conquerour Baronies were seudal, and in congruity to the State of he Lay Nobles he made the Bishops seudal Barons, for there was no other than seudal Nobi-

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It will not be amiss, nor time mispent, here to give a short account of the Government in the Conquerours time, of the Baronage by him introduced, and the Policy thereof, and of the change made in the Baronage of England in af-Because from thence we must derive ter-time. the Bishops Right now in question, which is included and virtually contained in their Right of Baronage. Hereby it will appear, that the Bishops were of the Barones majores, and of the Barones majores the first in Dignity, that they became feudal Barons in the Conquerour's time; and when the reason of our Baronage changed, and no man continued a Baron ratione tenuræ, it cannot with reason be said, that the Bishops are Barons only for the fake of their Lands, which our Adversaries do infift upon, for that they think it is an abatement to their Honour of Peerage, and a prejudice to their Right in question.

But because it has been said before by men of Authority in the Law, and grown up to be a vulgar error, we will now discharge the mistake, by affixing here the History and Reason of the thange.

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It was the Policy of the first William fome are fo critical they will not call him querour) to create new Tenures upon all great Possessions of the Realm, and impose on the principal men to hold their Lands of in capite, under fuch Services that were necessit in Peace and War for State and Justice, and putting all the confiderable men of the Re under Oaths of Fealty incident to those I nures, besides the Oaths of Allegiance, hom vided for the establishment of his Conquest, his possession of the Crown without Title. principal men of the Realm, both Ecclesialis and Lay, hereby were not only obliged to port, but to become part of the Government and were obliged to be Ministers of Justice, a alfo Members of the great Council of the Kin dom or Parliament, which was now to be made up principally of his Dependents; by which changed the constitution of the great Council the Saxons times, and the balance of that equ fort of Government; the consequent mischie whereof this Kingdom laboured under, until recovered it again by an equal representation of the Commons in Parliament, in the time King Henry the Third. The power of the ronage at that time to be reduced, proved equi ly oppressive to the People, and irreverent it the Crown. By this Policy the Conquerous intended to establish his Conquest, to secure to himself, and his Posterity the Imperial Crown of England, imagining, that otherwise he should

have been but a precarious King.

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He had now turn'd the Kingdom upon the matter, into one great Mannor, and kept his Courts, called, the Curia Regis, in the nature of a Sovereign Court Baron; now become more frequented and folemn; than that Court was before the Conquest, thrice in every Year, at stated Times, and Places; viz. at Easter, at Winchester; at Whitsuntide, at Westminster, and at Christmas, at Gloucester: at these times and places, all his Tenants, which were all the considerable Free-holders of England, attended of course; and upon a General Summons at any other time or place appointed by the King, as his Affairs did require, they were bound likewise to attend?

In these Courts the Suitors swore Fealty, did renew and confirm their Obligations to the Crown, and the King became more assured of their Allegiance, by their Personal Attendance, and by his Royal Entertainments of them

at fuch times.

In these Courts they recognized their own Services, and the Rights of the King, their Lord, and assessed Aids and Escuage upon themselves, Prestations due to the Crown, to which in general they were obliged by their Tenures. In these Conventions the Right of the Suitors, the King's Tenants were adjudged, as Private Lords had Judgment of the Right of Lands,

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in pretence held of them in Fee, in their feve ral Manors, as they have to this day. But Right was not done by the Lord, the Cause was to be removed to this Curia Regis, the King be ing Lord Paramount, of whom all Estates, me diately, or immediately were held: Which pears by the Form of the Writ of Right now in use, which we will transcribe, N.B. preci pimus tibi quod sine dilatione plenum Rectum tena A. de B. de uno Messuagio L. in I, quæ clima tenere de te per liberum Servitium unius denarii per annum pro omni servitio, gaod W. de T. deforciat; & nist feceris Vicecomes faciatne a plius inde Clamorem audiamus pro defectu Relli The Common Pleas was not then a Court, and at this time the Appeal and refort to the King was in this Court, if Justice was not done by the Lord or Sheriff. So that the greatest part of the Justice of the Nation was administred in those Assemblies.

But it must not be understood, that this valt Convention was a Court of Judicature for every Cause; neither, that it was formally a Parliament, without some farther Act of the King for eresting that Convention into the great Council of the Nation.

But in this Curia Regis, they were obliged to answer the King's Writs of Summons, Writs of Commission, and obey his Appointments in the Ordinary Administration of Justice, in which the Capitalis Justiciarius, or Justicia was to preside.

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That this was not a Judicature, the vast numbers of those that made it, the inequality of the Persons considered under the Common Reason of being Tenants in Capite, and Barons, whereby they became indifferently members of the Curia Regis, besides the neglect that must necessarily be presumed in the greatest part of such a Body, to the business of Jurisdiction and judging of Rights, without particular Defignation thereto, do sufficiently argue and evince. But as many of them as were most proper to judge, or affist in the Judgment, as the Case did require, were appointed by the King, or his Capitalis Justiciarius. And that it was so in Fact, appears by that Famous Cause, wherein Arch-bithop Lanfranck, recovered against Odo, Bishop of Baieux, Earl of Kent. Eadmerus Hist. Nov. 1.1. f.g. tells us, That there was Principum Conventus, an Assembly of Barons at Pinneden in Kent; and that the Kings Precept was, Rex quatenus adunatis primoribus & probis viris, non solum de Comitatu Cantiæ, sed de aliis Comitatibus Angliæ, Querelie Lanfranci in medium ducerentur, examinarentur, & determinarentur; disposito itaque (saith he) principum Conventu apud Pinneden, Gaufridus Episcopus Constantiensis, vir ea tempestate prædives in Anglia Vice Regis (for Odo, Bishop of Baieux, one of the Litigants, was at that time the Justiciarius Angliæ) justitiam de suis querelis strenuissime, jussus, fecit; where we see Godfrey, at the King's Precept, took so many Barons of L .3 that

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that Country, or of any other, where any the Lands lay, as Affiltants to him: For our H storian faith, that Lanfranck, (though Godfre pronounced the Judgment) did recover judio Baronum qui placita tenuerunt. The probi hom nes were fuch, by whom the truth of the matter might be better understood, and did probable enquire of it, who did accord and agree to Judgment to be right. Lanfranck did recovered communi omnium astipulatione & judicio, asw Historian also informs us. I might cite man more Records of the Method of the Admin stration of Justice in this Curia Regis; bul should be too long in this matter, not be strictly necessary to the Question in hand, though the understanding of the Nature of this Count, and the Constitution of the Government at this time, will many ways inserve to the clearing the Right thereof.

CHAP. XVI.

Court of Common-

N this Court Peers were Tryed, all Pleas of the Crown heard; and whatever is now

Exchequer, was dispatch'd in this Curia Regis.
Here Fines were levyed, as appears by a Record furnished to us, by Sir Hen. Spelman, in his Gloss.
f. 279. the word Fines.

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There men famous for their Skill in the Law, did attend, and by this Judicature, some place was assigned them, where they were to hear such Causes as were referred and sent down to them.

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It is very possible that before them Fines may be levyed, i.e. Concord made of the thing in pretence, that was referred to them; and it may be true, that in a Charter of a Grant of Conusance of Causes, Words may be contained for excluding the Intromissions of the Justices of the one Bench, and the other: For fuch Charters never want words. These matters are produced by Sir Edward Coke, in his Preface to the Eighth Report, to prove that the Common Pleas was a Court before the Magna Charta of King John; for that these matters are in time before that Charter; but these Justices were no other than Ministers to the Curia Regis or pedanes judices: They were not fuch Justices as now make that Court, all Common Pleas being now appropriated to their Judicature: For the Writs, before that Charter, were returnable, coram me, vel Justitia mea, Glanvil. 1. 1.1 cap. 6. But after that Charter, they were returnable, coram Justiciariis meis apud Westmonasterium. Bracton. 1. 2. cap. 32. Before that, all Common Pleas were adjudged in the Curia Regis, and that Court did fend down the Cause to such as did attend that Court to receive its References. By Magna Charta, cap. 11. it was provided, Communia placita non L 4 sequan-

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sequantur Curiam nostram, sed teneantur in ali Writ certo loco. And now Writs were made ren fuch able there, the Common Pleas were taken of the Jurisdiction of the Curia Regis, one dicature was appointed for all Causes between the Subjects and the fame ordinary Judges, one place of Attendance for Litigants. this Provision, Justice was administred with Noise and Tumult; the Administration of committed to men of Skill; and to such in might be answerable for their Judgments, a

from whom it might be appealed.

vid But after Magna Charta, made by King Ju and confirmed 9 H. 3. the Authority on tinued of the Justitia, or Capitalis Justiciarin to him was the refort for Writs, from whence all Judicial Authority was still derived: He did direct and bound the Justice of the Court of Common Pleas, by fuch Formula's as were allowed in the Curia Regis, where the Chancel lor, and his Colledge of Clerks did attend for the forming of Writs, according to the nature of the Complaint, with the allowance of that Court; but the Authority of this Court caling, and the Office of this great Justiciary, & bout the end of H.3. we find in the Statutes of Glouc. 6 E. 1. c. 7. a Law for a Writ of Entry to be granted to the Reversioner, where Tenant in Dower, Aliens in Fee, though her Aliention was a Forfeiture of that Estate at Common Law: But it seems there had been no such Writ

Writ yet formed; and the Chancellor had no fuch Power of forming a new Writ. That Statute provides, that in that Case, there shall be a Writ of Entry thereof made in Chancery, which is called, A Writ of Entry in casu pro-

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And for that Power might not be wanting in the Chancellour to issue out new Writs where no Writs before formed were fitted to the Case. So that Writs in Cases of like reason had been granted; by W. 2. cap. 24. it was provided, quotiescunque evenerit in Cancellaria quod in uno casu reperitur Breve, & in consimili casu cadente simili indigente remedio concordent Clerici de Cancellaria in Brevi faciendo. Whereas in the full Authority of the Court of the Curia Regis, no Right could have failed of a Remedy: For Jura sunt matres Actionum. Derivative Authorities, are always strictifuris. No Rights are now taken to be remediable, but where they are in a Parity of Reason, or Analogy with such Rights as had received relief in the time of that Great and Original Judicature.

So inconvenient are those Reformations, that reform by pulling down: Want of Authority to do Right, is a greater Fault in Government, than the allowance of a Power that may be abused to Wrong and Oppression: But this is the true reason why we have so many Causes irremediable at Common Law, Petitioning

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for relief at this day in our Court of Chan ry; though, if the Statute of Westm. 2. before mentioned, were well improved, the Del of our Law would not be so shameful and torious.

By what hath been faid, it appears, that Common Pleas was not an Original Court a Court of ordinary Jurisdiction in the Brack Constitution of the Government; and su remains and continues to this time: Forth talės Court cannot proceed to Judgment in any Cal rum without an Original Writ out of Chancer priv though a late Statute makes their Judgman ima good, without an Original upon a Verdick I mus the Causes that are properly now of the on nisance of that Court of Common Pleas, hi been allotted to that Court Originally, who have the distribution of the Administration of Justice was made in the Constitution of the Govern ment, that Court, by its proper Authority, an its own Process, would have done Justice to a its Suitors, without first expecting a Writon of Chancery, to bring the Cause before them or leaving any right without remedy to complain in Chancery of the defects of Justice in that Court, and of our Law.

But that Law of Magna Charta, Court of Kingscap. 11. before-mentioned, which Bench. erected the Court of Common Pleas, fix'd the Judges, and appropriated ci-

vil Causes to their Judicature, no longer now ambu-

nbulatory, was the first step that was made reduce the Court of Barons, called, Curia omini Regis, in which the Capitalis Justiciarius nd a id preside: Yet still this Court continued a ourt of Pleas of the Crown and Appeals, and or those that had the Priviledge of that Court, Seaffan 1 2 can - P. Suitors, as appears by Bracton, l. 3. cap. 7. Rex habet unam propriam Curiam sicut Aulam Regiam, & Justitiarios Capitales, qui proprias causas Regias terminant o und rum omnium per querelam, (i.e. Appeal) vel per privilegium seu libertatem. This Sir Edward Coke must be a mistake, for sicut Aula Regia is not competent to that Court as now, sale fustitiarii were not the Chief Justices we now fustitiarii were not the Chief Justices we now the Office of the Capitalis Justitiarius did yet continue. But then that which follows in Bracton, the description of the Justices of the Court he before spake of puts the matter out of doubt; Item (faith he) Justitiariorum quidam sunt capitales, generales, perpetui, & majores, à latere Regis residentes; which terms are agreeable to none but the Barons.

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But this fort of Judicature was not fit for continuance, and the Barons were to be reduced, they were dismist of this Jurisdiction about the time that change was made, in reference to them in the Parliament; for as long as they continued in their numbers and power fo great as they were; both Courts and Parliaments were troubled

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troubled with tumultuous heaps of Pa Aic. brought thither by the Barons to counter d: 1 their pretences, of which who will may hief nough in Eadmerus. And this reducement th n doubt not), about the end of the Reign of when the first Writs were issued to chuse Ko of the Shire. Philip Baffet was the last of Capitales Justitiarii; Sir Henry Spelmans Gli p. 415. And then the Court of Kings Bench Cour to have such Judges as at this day, ad obitun he E 1272. Summorum Angliæ Justitiariorum a udge ritas cessavit, postea Capitales Justitiarii ad cita coram Rege tenenda appellati sunt, sim ancient Anonymous Author quoted by Sillin Spelman, Gloffary 406.

que That ancient Style of Capitalis Justition ter. Angliæ is now allowed to the Chief Justice of Kings Bench, though his legal Style is Capital Justitiarius ad placita coram Rege tenenda? E Radulphus Hengham was made the first Chief stice of the Kings Bench, as Sir Henry Spelm Gloffary 416. But the Chief Justices of the Common Pleas were first made about the in of King John's Magna Charta, when that Cou was fixed, as is before remembred. Sir Han Spelman out of Florilegus tells us, Martin !! teshul was Chief Justice of the Common Plan

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Barons of the Exchequer.

Neither did E. 1. trust the Barons with the Government of his Revo nue, as it was before the Capitalis Juftic.

fic. and the power of the Barons was redud; but he made Adam de Stratton a Clerk hief Baron, but in what time of his Reign

oth not appear.

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of H But they continued after they were reduced om the business of the Kings Bench, and from hat of the Court of Common Pleas, to have he Government of the Revenue, and making a Court of Exchequer. And they still continued he Exercise of their ancient ordinary Right, and judged Common Pleas in the Exchequer until the 28 E. 1. And then in the Statute called Articuli Super Cartas, cap. 4. it was enacted, That no Common Pleas shall be henceforth held in the Exchequer, contrary to the form of the Great Charter. Their exercising their power lastly in that Court, may be the reason why the Judges of that Court are called Barons. Sir Henry Spelman faith, he hath an uninterrupted Succession of the Barons of the Exchequer, from the fixth year of Edward the Second; by which it appears, that the present Constitution was established after the Kings Bench and Common Pleas were made fuch Courts as they now are.

These new Judicatures were erected upon the reducement of the Curia Regis and the Office of the Capitalis Justitiarius Angliæ; and in consequence all derivative and delegated Authorities thence did agreeably cease. The want of remembring or giving heed to this hath been the occasion of a novel Opinion, That the An-

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cient Court of the Marshalsea, that had a zance of all Pleas of the Crown arising with the Verge, doth yet continue; whereas it appear antiquated and abolished by shortly claring what the Authority of that Court w

It was no other than a delegated and den Authority from the Capitalis Justitiarius.

For this we have the Authority of Fleta 2. cap. 2. Habet & Rex Curiam Suam cora neschallo in Aulà suà qui jam tenet locum ca lis Justitiarii Regis, de quo fit mentio in com brevi de homine replegiando, qui propriam Regis terminare consuevit & falsum Judicina veritatem revocare & conquerentibus absquinn Justitiam exhibere, cujus vices gerit in partein Seneschallus Hospitii Regis, cujus interest de nibus actionibus contra pacem intra metas hospi continentes duodecim leucas in circuitu Reg ubicunque fuerit in Anglia quod quidem spatu dicitur Virgata Regia illatis etiam sine Brevin obstante Privilegio vel libertate alicujus lego Regni expectantis: Auditis querimoniis injuin rum in Aula Regia audire & terminare.

This Book appears to be of unquestionable Authority, it being a very Learned Book, and

writ with judgment and accuracy.

Besides Mr. Selden tells us that that Book was written by some eminent Judges and great Law yers of that Age, committed to the Prison of the Fleet for Bribery and Corruption, and thence the Book had its Name. These great Lawyers were

were then expiating for their Corruptions, and by this Book intended to make some publick satisfactions, and to Redeem their Honour.

By this Authority it appears that the Steward of the Court of the Verge had only a delegated Authority of the Capitalis Justitiarius Anglia.

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So great an Officer and Magistrate it seems might make his Deputy. And it feems very congruous to the high Dignity and vast Trust of this mighty Magistrate, when by the Statute of Magna Charta, cap. 11. this Capitalis Justitiarius had Power given him to make and appoint Justices of Assife. Capitales Justitiarii nostri mittent Justitiarios nostros per unumquemque Comitatum semel in Anno qui cum militibus eorundem Comitatuum capiant in Comitatibus illis Assisas predict. Sir Edw. Coke, M.C. f, 26. That they sent these Justices of Assise by Authority under the Great Seal under their own Test, which none can do but the King himself if he be present, nor any Officer but he if the King were absent. Who was meant by this Capitalis Justitiarius in the passage recited out of Fleta, appears by what we have transcribed out of it (viz.) That the Senechallus was Vicegerent in part of the Capitalis Justitiarius, who is mentioned in the common Writ de Homine Replegiando. This Writ I find recited in Bratton, b Lib. 3. Cap. Rex Vicecomiti salutem præcipimus tibi quod juste & sine dilatione replegiarii facias talem quem talis ceperit & captum detinet nisi captus

fit per speciale preceptum nostrum vel Capin n th Justitiarii nostri vel pro morte hominis, vel hel resta nostra, vel pro aliquo alio recto quare, luch cundum legem Angliæ non sit replegiandus ne be e plius, Sc. pro defectu Justitiæ, Sc. Teste, Sc. Brid in F writ in the time of H. 3. and therefore the pitalis Justitiarius mentioned in Fleta, can ten no other than the great Officer before m Shou tioned, whose Office as to the Jurisdiction m Full tioned in. Fleta, is reduced and placed in gre Kings Bench: but none of the Powers and A Sen thorities can be by that Court delegated or trans utte ferred to any other. It appears likewikh Fleta, that the Authority of this Senescheller was ordinary, that he proceeded ex officio with out Commission or Writ fine Brevi, a certain Diagnostick that it was the Authority of the So veraign Judicature in which the Capit. Justice did preside that was exercised by this Senes challus.

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That this Seneschallus proceeded ex officio in all Causes, and had the vicarious Power of the Ancient Capitalis Justitiarius appears too by Britton, who wrote his Book about the beginning of Edward the First, in the first. Chapter, If we understand these words in him, Nous we lons que nostre Jurisdiction soit sur touts Juis dictions in Nostre Royalme of the Curia Regu, which is very reasonable, since it was held a And the Kings of England never ram Rege. was said to exercise any Jurisdiction other than in that Court, which in the stile of the Laws was the Kings Jurisdiction. And besides it is fit that Such an obscure and dark Writer as Britton should be explained by that which is distinct and clear

in Fleth to the same purpose.

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It is not strange that Fleta, which was written about the beginning of Edward the First, should speak of the Authority of the Capitalis Justitiarius and of a vicarious Power of that great Magistrate exercised by the mentioned Seneschallus as then in being: When it was not utterly abolished by any positive Act of. State (as will appear by what we shall say of the Authority of the Lord High Steward) but reduced and cantonifed into our feveral great Westminfter Judicatures, as we have before shewed: But that Office remained at that time in the confideration of the Law (as we fay) and was not at the time of his Writing (to be fure) long difcontinued in the exercise thereof.

Sir Edw. Coke, in his 10th. Report, in the Cafe of the Marshalsea saith, that Fleta was writ in the time of Edward the First, before the Statute of Articuli Super Chartas, made 28 E. I. for which he gives no Reason: but in his Preface to that Report, which one would think was writ after the Report, and therefore sure gives us his second and last thoughts; he saith, it appears that the Author of Fleta lived in the Reigns of Edward the Second, or Edward the Third, which he proves from these passages in the Book it self, M

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viz, Lib. 1. cap. 20. s. Qui ceperint. And In cap. 66. s. Item quod nullus. Both which the clearest Evidence and Proof that the Boward the First

The Section, Qui ceperint, is thus: Amon the Capitula Coronæ & Itineris to be enquion of by the Justices Itinerant, this is mention as one, Qui ceperint mandatum Regis ut ejustita solverent, & à creditoribus aliquam por nem ceperint ut illus residuum solverent & niminus totum sibi allocari secerint in Scacca vel alibi.

First, this was an offence at common Law is being a manifest and publick injustice and pression to the Kings Servants, to the discourse ment of Publick Services and Ministries to the Crown, by which the King and Common weak will be ill served. And Secondly, in the State West. 1. made 3 Ed. 1 it is thus Enacted. It caux que pernont part des dets de le Roy, ou a ters louers pernont des Creansors le Roy, pur sur le payment des mesmes celles dets purview et quils rendent le double & soient punies grevement a la volunt le Roy.

The other Section, Item quod nullus, is this Item quod nullus distringatur pro Scutagio, to capiatur sicut capi consuevit tempore Henrici Rogis proavi Regis nunc. Henry the Second was Great Grand-sather to Edward the First, and Grand-sather to Henry the Third every man knows. By the Great Charter of Henry the Third

Third, capit 7. It is Enacted, Scutagium de actero capitatar sicut capi consuevit tempore Hen-

rici Regis avi nostri.

Certain it is, whatever Authority was exercifed by the Seneschallus as Vice-gerent to the Ancient Capitalis Justitiarius by the discontinuance of that Office is discontinued, and by the long discontinuance of that Office antiquated and abolished.

And this I think is a fair and clear account of the ceasing of the Ancient Court of the Verge, and a very sufficient Reason, for Sir Ed. Cook, his conclusion in his Magna Charta, fol. 549. (viz.) That the Power of the Steward and Marshal to hold Plea of all Felonies within the Verge is vanished.

His Authority as Steward and Marshal of the Court of the Marshalsea of the Kings Houshold continues. His Power as such was confined to Felonies done within the circuit of the Kings Houshold, the bounds whereof are made certain, the Judges of that Court, and the manner of their proceedings established by 33 H.8. c.12. And he might have determined all Felonies committed within the Kings Palace before the said Statute, Stamf. pl. cor. lib. 2. cap. 5.

And what Power the Steward and Marshal shall have in Civil Causes was settled and limited by the Statute of Articuli super Chartas, cap. 3.

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Powers that belong to an Office cannot be ecuted by Commission, nor Justice administration by Commission, where it ought to proceed Writ, Dyer, fol. 175. No new Office can be erected, nor no Commissions issue but what allowed by Law: The very form that the La appoints must be exactly observed. We had a Commission quash'd for being in English when it should have been in Latin. Sir Ed. Call 12th. Report, fol. 31.

So Sacred have we hitherto preserved the boundaries of Power which are fixed by the Commissions and Authorities which the Law has established, beyond which our Kings cannot on mand, nor have any Right to be obeyed. That our Judges have not suffered the least variance from the very form of words, no, not so much as in the Language used and directed by Law for the same.

Authority to Corporations to hold Plea of all Actions, and to hear and determine Pleas of the Crown that shall arise within the district of the respective Corporation. It seems incident to his Power of incorporating and instituting Polities: That the King should grant Authority to those little Polities or Corporations to Govern themselves, and do Right amongst the Members thereof according to Law, for in this matter that of Tully must be observed, Contra natural ram publicam nihil contendamus ea tamen conservata propriam sequamur.

And this concession of Judicature to Corporations is with Reason allowable, for that the perpetuity of fuch grants exempts them from being suspected and savouring of any particular design. And they do not import any favour or advantage to any particular Person, which in the Commitment of Administration of Justice is by no means to be allowed. But Authorities that in the manner of creating them feem to have any fuch respects are by the reason of our Law to be condemned and suppressed. And the rather, for that fuch Authorities agreeably to the reasons of creating them have always been executed with Oppression and Vexation, and followed with grievous complaints.

To bring in use again antiquated Law is as unwarrantable as to make new without Authority

of Parliament.

It is dishonourable to a Government to be administred with shifts: to see it shifting with an Ox and an Asse, and putting a new patch upon old Rags to vamp out an antiquated Authority with a new Commission of Oyer and Terminer most illegally executed. A Commission of Oyer and Terminer can have no less division than a County for its extent, nor administred to by any Officer but the Sheriff for Summoning the Countrey and returning of Jurors.

What Authority doth now duly belong to the Court of the Marshalsea, upon these considerations I leave to better Judgments, and whether they

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they do not incur a Premunire that extend beyond its due bounds I leave them to confi who are concerned, especially as to Pleas of Crown that arise within the Verge and out the Palace.

Since we have no such Officer as the ancie Capitalis Justitiarius the vicarious Power of the Officer cannot be Legally executed by the Ster ard of the Marshalsea: For by such an Authority the Steward of the Marshalsea anciently thear and determine Pleas of the Crown communed within the Verge, and out of the Royalsea, as we have undeniably proved.

Court of High-Steward. But there was one Power and in thority that was inseparable from the Baronage, and that is the Tryal

of Peers, the ancient Curia Regis continues to this day to that purpose, as it must, no other provision being ever fince made therein. This is the ancient Court of Peers, the Curia Regis when revived The Power and Authority of the ancien Capita lis Justitiarius is as often revived, as that Court is erected for Tryal; for Offices at Common law can be no more nor less than the Law appointed That he is called High Steward is no Objection to us, for so was the Capitalis Justitiarius called, and Justitiarius and Seneschallus are used one for another in the Language of those times; Sir Hen. Spelmans Glossary 403. And this is the true reafon, I humbly conceive, of that Tradition, that the High Steward by the Kings constituting him fuch, and such, hath fuch mighty Powers that are fit to be rusted with him, no longer than while he is busie bout that piece of Justice for which he is appointed; and he is not to receive his Commission, but just at his entry upon the business of the Court, and not before. The Power of this Capitalis Justitiarius was the same with that of the Mair of the Palace in France, from whence the Conquerour brought this Office, which was the fame, or greater, with the Authority of the Prafectus Prætorio amongst the Romans.

It is a thing to be wished, that Gentlemen that apply themselves to the study of Antiquities that relate to our Laws and Government, would defign to adorn and altivate the present Laws, and to make out their reasonableness, rather than to innovate upon us, by bringing back what is obsolete, rejected, and antiquated; and that they would contribute what they can to refine it from many abfurd reasons, that dishonour our Faculty, which are the best our Books afford even for

some of the Regulæ juris.

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I shall instance only in one or two of them: Why the Father cannot inherit the Lands of the Son, it is told us for a reason in our Books, that Terra est quid ponderosum, and will not ascend in the right line; whereas the true reason is this, the Lord that first granted the Fee, neglected the Father, gave it to the Son and his Descendents, and to the Family he should derive from himself; and when this was after alienated in Fee, the descent of

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of it was directed agreeably to the manner; they, direction of the first Collation. If the Fat ing th gave the Son the Estate, there was a Ten mitte created, of the Father, as there was in all in Book ments of the Feoffer, before the Statute of allow emptores terrarum; and it is a Rule in Law, sed n a man cannot be hæres & dominus; Stamfor and Exposition of the Prerogative, chap. 5. fol. 21 For Example, If before the Statute of & emptores, the eldest Son had enfeoffed them dlemost, to hold of him, and had taken Homage; the middlemost dieth without In the youngest should have had the Land, at Howbeit if there were to not the eldest. youngest Son, or any other eir, then the h offer might claim the Land again by Eschea and not otherwise.

Another is this: For a reason in our Law, why the Children of several venters shall not inherit each others Lands: it is told us, it is so because they are but of the half blood to one another, and therefore the Brother of the first venter shall not succeed to the State of the Brother by a second venter which dies without Issue. But the Land must descend to the Uncle, But this Uncle can be but of the half blood to the Nephew, and the very reason that is given for the Law makes the Law unreasonable. But the true reason why the Brothers of different venters cannot inherit each other, is a disallowance that our Ancestors the Saxons, had of second Marriages,

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they, as most of the German Nations, esteeming them as concubinat, and at best, but as permitted Fornication: So Tacitus tells us, in his Book, de moribus Germanorum, that they did not allow of Second Marriages, Ne non maritum, sed matrimonium ament, non nuptam sed nuptias; and agreeable to this Opinion, are descents governed in several Countries in Germany at this day.

This (tho it is apt to excite all Gentlemen of the Robe, never to Chancery

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acquiesce in any reason of the Law that is not sence, which if they do, will forfeit their Reason and Judgment) I should not have been so impertinent as to have mentioned in this Discourse; but that this dealing in Causes without the exercise of clear reafon about them, hath brought it to pass, that much of our Law will not fort to Natural Reafon and Justice; and this gave one great occafion to the Rife and Growth of the Court of Chancery. Since it came in my way, to shew the Original of the other Courts; and the Reader may wonder, that there is nothing in Antiquity, that gives Authority to fo celebrated, and so busie a Court as this is at this day: I will here offer an account of the Rife and Growth of it; which will prepare the way for taking of it down, which is no less a Reproach, than it is a Grievance to the Nation.

There is nothing so great a Reproach to a Nation,

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Nation, than to have Laws that are confessed not good and equal, to continue them and to allow of an Authority to reproach the with Iniquity: that our Courts of Law show be under Rules and Obligations, to pronoun Judgments, which a single Gentleman shall a thoritatively controul and condemn, as unnet teous; that Law and Equity should be Opposites; That a Judgment must be made up, a form'd in a Case, and what is equal, just and therein, must not be considered, though it a be, and will, in another Court have a judge Consideration.

Our Judges at Law, take themselves bound, not to hear, or regard the Allegations of the Desendants against the Plaintiss pretence, which ought in good reason to bar them therein; or, at least, qualifie the Judgments; when the same matter shall be heard in Chancery, and prevail either wholly to set aside, or to qualifie the same Judgments.

This is not only to be complain'd of as derogatory to the Reputation of the Wisdom of the Nation; but is insufferably oppressive to the Subject, by the multiplicity of Suits, tedious and vexatious Delays: Nay, by this ill Contrivance, the Expences sometimes equal, sometimes exceed the Value of the Right, which is litigated, and which is worse, the Event of the Suitis very uncertain and sortuitous.

But this is not all; our Law, it seems, is not a Rule

Rule that extends it self to all Causes; and we have Rights, confessedly such, and which an be judicially remedied, to which the Common Law extends no Relief: For a thousand Causes in a year, are for that reason heard in the Court of Chancery.

Two such Reproaches, no Nation but ours hath ever yet incurr'd or suffer'd, acknowledge-

Two fuch Reproaches, no Nation but ours hath ever yet incurr'd or fuffer'd, acknowledged, and yet not redressed: For Law and Equity is no where else opposed, and every Right hath its Remedy by the Law of the Countrey, but

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The first great occasion to the rise of the Chancery, was, Feoffments, made upon Trust, to uses in the time of our Warring about the Title of the Crown, to avoid Forfeitures. The Judges, in tenderness to the Condition and necessity of those times, did Judge, that an Use was no Right (though most certainly it is. For it is jus ad rem) that nothing might be forfeited when it depended upon chance whether a man should be a good Subject, or a Traitor. And the same consideration easily admitted of any Authority that would interpose to relieve against those who would abuse, or deny such Trusts; and no body brought into question, that authority, by which a piece of Justice, fo necessary to the Nation, was administred.

Another great reason of the business of the Court of Chancery, is that which we before mentioned, that we have not improved the

Statute

Statute of West. 2 C. 24. And a third, is th r ill conducting of our Laws: our Ancient Ju ar L were infected with the Monkery of that in men of no Learning, and of a vain Subi re r ertai The Theology of those times was insipid. non! most trifling, and the Administration of ed, stice agreeably turned into a vain Art of nay puting the apices juris; and a subtilty wast Chan too fine for business, and to govern the Aff Law. of Men that governed themselves by none com those Superfineries. They argued without Charcourse, or discoursed from positive Rules Virt Presidents which were almost the same with Lore them as Rules of Law, and not from them have Merits of the Cause, and its own particular reasons of Right.

And the Common Law, which is Lex not foripta, i. e. that which a wife Judicature should declare, upon the consideration of the present Case, was by the Proceedings of our Court, turned into a Lex scripta, positive and inflexible; and the Rule of Justice could not accommodate it self to every Case, according to the Exigency

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of Right and Justice.

But if it were consider'd, that there can be no Prescription against Justice, that no Prescription against Justice, that no Prescription against Justice, that no Prescription, where a Right hath not been relieved, can be pretended why it should not be assisted hereafter: And if a matter pleaded in Bar, upon which the Defendant will be certainly relieved in Chancery, may, notwithstanding it hath

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th not heretofore, be hereafter allowed in ar Law-Courts, we should be in a great meat Ju the ire restored to our easie, expedite, cheap, and ubi certain Justice, which the Methods of our Comnon Law-Courts hath most excellently proviof ed, until a Parliament, some time, or other, of nay consider, whether it be not fit to take the Chancery quite down, by inabling Courts of Law, to do true Right in all Causes that shall come before them: For nothing renders the Virtue, and Great Endowments of our present Lord Chancellour, in which he is not like to have a Successor.

CHAP. XVII.

DUT to return to the Curia Regis, it was not D only the great Judicature of the Nation formally; but it was also materially our Parliament too.

That this Curia Regis was not without any more, the Parliament of these times, is evident: first, that the Curia Regis, was Summoned by a general Writ of Summons, directed to the Sheriffs in this Form, viz. Rex Vicecomiti Northamptoniæ, &c. præcipimus tibi quod summoneri facias Archiepiscopos, Episcopos, Comites, Barones, Abbates, Priores, Milites, & Liberos homines,

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homines, qui de nobis tenent in Capite, & Clauf. 26 H. 3. M. 7. Dorso. This must nerily be this Curia Regis, in Distinction to liament.

For that in the Grand Charter of Kingh made in the last year of his Reign, it was gran that Ad habendum Commune Concilium Regniauxilio assidendo, (aliter quam in tribus predicasibus; i. e. Those cases of Aid, to make the est Son a Knight to Marry the eldest Daugh and of Ransom, and de Scutagiis assidendis fur mus summoneri Archiepiscopos, Episcopos, Abbut & Comites, & majores Barones Regni, sigillating Literas nostras. Et præterea faciemus summent in generali per Vicecomites & Ballivos nostros nes alios, qui in capite tenent de nobis.

At present we make no other use of this Gran Charter, than to prove it a distinctive mark a Parliament, where the Summons are person to the Bishops, Earls, and the greater Baron. This Charter of King Johns declares the ancient usage of Summoning the greater Barons, by special Summons to them severally directed; for that the Kings before him, as Sir Hen. Spelman in the Glossary, p. 80. Propter crebra bella & simultanting quas aliquando habuêre cum his ipsis majoribus sum Baronibus, alios etiam eorum interdum omitterent, & ægrè hoc ferentes Proceres Johannem adegên sub magno sigillo Angliæ pacisci, ut Archiepisco pos, Episcopos, Comites, & majores Barones Regni, sigillatim per Literas summoneri saceret. By which

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it was provided, that all the Barons should have pro more Summons to the Parliament, that none of those great Barons should want his several Summons, and they had anciently several Summons, for in a general Summons no body was excluded. By which it doth appear that the Council at Northampton wherein Thomas of Becket was brought in Judgment, was a Parliament, and not the Curia Regis; for that the Bishops had their several Writs of Summons, which appears in that Fitz Stephens tells us as matter of observation, that Thomas of Canterbury had not his Writ of Summons, but was cited as a Crimminal to answer; which we before observed.

And this was but necessary, that when the Tenents in capite, or Barons, which principally at least made the Parliament, were to be consulted about some arduous Affairs, that they should have notice and a solemn intimation thereof, and their presence required and enjoyned, by Writs to them particularly and personally directed.

Besides that, it was agreeable to all the forms of Government then in use, to have their ordinary and extraordinary Council. For, Omnes Germanica Originis Reges at que Imperatores, duplici Concilio antiquitàs utebantur, altero statario, qui Senatus dicitur ad res quotidianas, altero evocato, concilium aut conventus ordinum ad res momenti majoris; as Grotius assures us.

Neither can it be denied by any man of modesty, who hath heard any thing of the state of our Government before the Conquest, and knows that many ancient Burroughs fend h Mr. geffes to Parliament by Prescription, and Itas consider the Records produced by Mr. Petin nui, his very learned and elaborate Book, called Reg Ancient Right of the Commons of England, to pro bus the Right of ancient Burroughs to fend Me Suor Bers to Parliament who represent them; but cili Tuch, though not Suitors to the Curia Regis, w Con Pop Members de jure of the great Council of Parl ment. But the truth is, they are not mentione for fen In any Record or History of any Parliamer from the beginning of the Conquerours Ren M to the end of Henry 3. as a distinct part of the Parliament of England, their Numbers and Qu lities were little and mean, of no consideration an comparison to that great Body of the Baro mage that constituted our Parliaments in that time; but our Parliaments feem by the flyleule in Histories and Records, to be only the Baro nage of England. William the First in the fourth year of his Reign, Confilio Baronum fuorum faith Hoveden p. 343.) fecit summoneri per universa Consulatus Anglia, Anglos nobiles & sapientes, sua bege eruditos, ut eorum & jura & consuctudines ab ipsis audiret. Those who were returned fhewed what the Customs of the Kingdom were; which with the affent of the same Barons were for the most part confirmed in that Assembly, which was a Parliament of that time, faithML Selden, Titles of Honour, pag. 701. Amongs

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Amongst the Laws of Hen. 1. published by Mr. Abraham Whelock, cap. 2. I find thus; Forestas communi consonsu Banonum in manu mea retinui, sicut pater meus gas habuit. And after, Lagam Regis Edwardi wobis reddo; cum illis emendationibus quibus pater meus emendavit consilio Baronum Suorum. The Parsiament is styled Commune Concilium gents; Anglorum; and at the same time, Commune Concilium Baronum; and also Clerus & Populus, Matth, Paris, fol. 52,53, 54. And this is sometimes, called Communitys, for that it reprefents the whole People, and involves their consent. Which appears by 48 H. 3. Pars unica M.6.D. Hæc est forma pagu à Domino Rege, & Domino Edwardo filio suo, Pralatis & Proceribus omnibus, & Communitate Regni Anglia, communiter & concorditer approbata. And that Communitas Regni hath no other fense than commune concilium Regni, and used as a comprehensive term of them that made it, is evident; for that it is faid in the same Record, Si videatur communitati Prælatorum & Baronum. And again, Per confilium communitatis Prælatorum & Baro-Further, Magnaies & Universitas Regni. are sometimes used for the Parliament, Matth. Paris, 659, 666.

After King John's Charter, wherein it was established, that those that were not Barones majores, qui tenent de nobis in capite, should be generally summoned. It is observable, that the Barones mineres are so mentioned, as if the name of Barons were not to belong to them. Agree-

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able thereto is that we have mentioned in Ityle of our Parliaments, of Militer libere in tes, & alii fideles, and are all thvolved in general, Et universi de Bardnagio Regni And Several Instances of this are in Mr. Petyr, and mentioned, p. 111, 112, 113, 114, 115, 1 besides that, many Instances of the like Sil Parliaments in those times are obvious.

tyt, That our Parliaments in those times were rone conflictuted, is to clear, that it cannot be To n Tembled : But I do not deny, but upon a chin Jemi In the Succession to the Crown, there me lice Let ons of the People, to declare their Union Wh Affent, for better affuring fuch Successor, die countenancing the Rival Prince; and press ving the Peace; as in the Cafe of William the Second, Henry the First, King Stephen, and King John, which thath been usual in othe Countreys, in mighty Diffrestes of State, sin me were in use amongst the Jews. Jusephas call fuch an Assembly, mayonuov ekkinotal. Groting in his Annot. p. 200. tells us, Sollitos fuisse fudal interdum in rebus ad summam Religionis, aut su perii Spectantibus advocare ad Synedrium quiquot habere poterant tribuum Primores, alifvette noribus præditos, ut quod constituerunt legis point a populo probatæ, quam Senatus confalti baberet auctoritatem. With the affent of such an Affenbly as this; at least King John should only si (6) have made this Kingdom Tributary to the Pope; though I believe, what he did in it, he did

lid without, and against the Affent of that Parlament, in which he could only therefore offer to do it. He did no more effective; than of Right he could, which is nothing. That which was done, was without the Confent of his Bi-Thops and Barons, as appears by a Letter of his to the Pope, in those words recited by Mr. Petyt, in his mentioned Book, Cam Comites & Barones Angliæ nobis devoti essent antequam Nos, & nostram Terram Domino vestro subjecere curas-Jemus, Extune in Nos specialiter ob bor ficut publice dieunt violenter infungunt! And by another Letter of his, to the Pope, recited, p.1163. Letter of his to the Pope, recited, p.1163.
Wherein he complains of the Bishops Disobedience on this Occasion; which I the rather take notice of, that the Cause of our Government residuality has been recited by depending ment might not be berrayed; by depending upon such weak Inferences as those, viz. that 出述 there was a House of Commons at that time. which did not confent to the vaffallating of the which did not confent to the validating of the Kingdom, by King John to the Pope : For that otherwise, it could have been validly done.

And that, if our present House of Commons, in the same Form as it is now constituted, was therefore an Effential part of our Government: such Issues as these, I am sure we shall not mlong hold it. The greatest Truths are betrayfif the ed by weak Proofs, and the clearest Right, formetimes lost, by putting it upon an uncertain or improbable lifue. This is certain, that what-N 2

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ever change of Government is introduced by Consent of the Prince, and that Alteration fented to and embraced, avowed and our by every man of the Community, by Adin and other open Declarations of a full Confe and this continued for Centuries of Years; in all that time, applauded, and found agree to the Interest of the Prince and People the Old Government abolish'd and impra cable, the very matter of it ceasing; and come a thing impossible, as well as not define to be restored. I say, whatever Constitute is thus introduced and established, is a w movable as unalterable, (or no Government as if it had been ever fo: For there can be Government in this World that is eternal; in this Change came, we shall speak to by a by.

But for the sake of Truth, I must content that I have no reason to believe, that the Content is, in all this time, had their Representation Parliament, by the formality of a Choose But this is a great mistake, that the People cannot be represented, but by such as are into time to time chosen by them; whenas ever Government is the Representative of the People in what they are to be governed by it, and their Consent to it in the first creeting them of, they do trust their Governors with the Ruand Order of their Lives and Estates, for the Common-weal: For Government, as well and Order of their Lives and Estates, for the Common-weal: For Government, as well Law, is Reipublicæ communis sponsto, to use But the Ruand Common-weal is the communis sponsto, to use But the Ruand Common-weal is the communis sponsto, to use But the Ruand Common-weal is the communis sponsto, to use But the Ruand Common-weal is the communis sponsto, to use But the Ruand Common-weal is the communis sponsto, to use But the Ruand Common-weal is the communis sponsto, to use But the Ruand Common-weal is the communis sponsto, to use But the Ruand Common-weal is the communis sponsto, to use But the Ruand Common-weal is the communis sponsto, to use But the Ruand Common-weal is the communis sponsto, to use But the Ruand Common the Ruan

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Hon's Words. I cannot eafily tell which is more eligible for the affuring us of good Men in the Common Council of the Kingdom, whether the Choice, and Designation of a Person thereto by his Character, and a General Rule, or by the contingent Suffrages of the People. But they are, I am sure, as much our Representatives, who are appointed thereto by the Constitutions of the Government, embraced and consented to by the People, as those are, whom the People nominate for that purpose. I know no reason therefore why any should think, that nothing is stable in our Government, but what hath been ever so, and in the same Form; or that any man should be so affrighted with the Objection as if it made our Government shake) which some slight Antiquaries make (for little Learning in Antiquity will serve for that purpose) That our Parliament was not at all times such as it is at this day. It sufficeth to me that it was always materially the same. When the Conqueror did innovate his Tenures in Capite, and made all men of great Estates, Barons; and by their Tenures and Estates, Members of Parliament, we had then such Laws, quas vulgus elegerit; and then we had materially our three Estates, though not so well fized and forted as fince. I thought fit to fay this, for the preventing the World's being troubled with such Impertinent Labors, and to divert those that thus employ themselves to undertakings more useful to the Publick, and advantageous to themselves.

We had then (I fay) many great Freehold righ in every County, that by their Tenures ralle Members of Parliament, whereas now well Lord but two; and though the People did not de War them, yet the men of that Order feem cho tain once for all interpretatively, by the People nest their confent to the Government; and the trut might be reasonably presumed to be faithful Hif the Commonweal, from their own great a real cernments therein. In this Constitution for any man that was fit to be chosen, but was with out the Peoples choice a Member of Parliament as now they have more who are fit to be choke than they can chuse. So that the Barone; mino res who were then instead of Knights of the Shire; and the Barones majores, Bishops an Earls, &c. did then as now make the Parliamen

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Besides the Barones majores and minores, the was at this time a distinction between the Ban nes Regis and Barones Regni, which I will her explain, to prevent any mistake that may gow thereupon. The Barones Regni were Baronsby Tenure, and made part of the Government by the Constitution of the first William; and so in process of time called Barones Regni, because they had by continuance of that Constitution acquired a fixed right to that Honour. But be cause of the frequent Wars between the Barons and the Kings at that time, they did omit to furnmon some who were Barons by Tenure, and now duly called Barones Regni to Parliament, and called others to Parliament that had no right (367)

right to be called ratione tenurae, and these they called Barones Regis. This was ill taken by the Lords, and was one of the occasions of their War with King John; upon which they did obtain his Charter for remedy as followeth; Barones majores Regni sigillatim summoneri faceret. The truth of this as to the fact will appear by the Histories of those times; and that this is the reason of that distinction of Barones Regis and Barones Regni, doth appear by the recited Charter of King John, where the majores Barones are called Barones Regni; for the Barons were more concerned for the lofing of their Honours, than they were at the communication of the like Honours to others, and with reason; though all Honours are lessened by the numbers of those

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The inconveniences and mischiefs of this Constitution were very great and very sensible, by making the Government thus upon the matter to confift of one Order; there was no third to moderate and hold the balance. The Honour of the great Nobility was lessened, by an Equality of Suffrage in the great Council of the Kingdom, yielded to the Tenents in capite, and they were not so concerned to support the Dignity of the Crown for the maintaining their own, which in that Constitution could not It had the faults of either House, and the virtues of neither: they pressed hard upon the King, and were uneafie and oppressive to the People: they were not reverent of the Crown, nor

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nor tender of common tight. The great Cher provides against the Oppressions of green, as it doth for bounding the Prerogan Our mixt Monarchy was out of tune, by Aristocratical Power of the Baronage, now come too excessive by the policy of the Conq rour; by his advancing too great numbers to Dignity, too great to depend upon the Cron or to be govern'd by it unaffifted. That which first William intended and designed for the blishment of his Conquest, and of the Peace the Kingdom, made it very easie to afflich la Princes. But by feveral steps we recovered being taught and instructed to it by our Expenent and the sufferance of great Calamities, such Representative that might most certainly effet what in all Ages was intended and defigned, an that nothing should be Law or civilly just, bu what the People affent to, and by which the Persons and Rights are secured and defended which is the fole end of Government.

But evident it is, that this more equal and clear representative, which we now enjoy in our House of Commons, grew upon the reducement of the excessive number of Barons, so great that it made them a Tumult rather than an Assembly, and was induced for the reducement of the power of the greater Barons: for in the Parliament of 49 H.), when but 25 Lay Barons were summoned, (tho in the 41 year of his Reign he numbered 250 great Baronies in England) we find Writs for electing to a Parliament at London, two Knights, Citie

Citizens, and Burgess, and Barons for the Cinque-Ports: before that time, none were found, nor any Foot-steps of Right for the Counties sending Knights to Parliament; though there is a clear Right appears for the Burroughs to send Burgesses; which we shall speak to atterwards.

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It will not be impertinent, here to add, that the Government of Scotland, which runs parallel almost to our English Government, found it inconvenient, that all the Tenants in Capite should refort to their Parliaments; and theretore, they were reduc'd in this manner; viz. their Barones Minores, or Tenants in Capite, in every County, choose two of their own number to Parliaments; which, at this day, they call the Barons for Counties: whereas, all our Free-holders choose their Knights of the Shire; and our Elections are not restrained to Tenants in Capite. And this made it more reasonable for our Representatives of Shires (together with the Burgeises) to become, in process of time, a distinct Lower House; whereas, their Barons of Shires fit together with the Lords, and vote in Common with them. The Knights of the Shire, which made the principal part of the Representative of the Commons, having no Relation to the House of Peers, or the Baronage of England; because, chosen by all the Free-holders indifferently, though not Tenants in Capite.

But to return to our History that deduceth the Change of our Government. That some

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great matters for publick Good and Establish did ment of the peace of the King and Kingdo was treated of in this Parliament, (they did (th be fure establish this new Form of a Parliament will appear by a Form of a Writ of Summon to the Bishop of Durham, to that Parliamen Henricus Deign which I will here transcribe. tia, Rex Anglia, Dominus Hibernia, & Dux Aqui tania, venerabili in Christo patri R. Episcopo, D. nelmenfi salutem. Cum post gravia turbationum di crimina dudum habita in Regno Nostro, Charifim filius Edwardus primogenitus noster, pro pacein regno nostro assecuranda. E firmanda obses traditus extitisset & jam sedata (benedictus Deus) tubb. tione prædicta super deliberatione ejusdem salubii. ter providenda & plena securitate, & tranquillitate pacis ad honorem Dei, & utilitate totius Regnine Stri firmanda, & totaliter complenda ac super quibusdam aliis Regni nostri negotiis, quæ sine Consili vestro, & aliorum Prælatorum, & magnatumnostro rum nolumus expediri, cum eisdem tractatum haben nos oportet; vobis mandamus, Rogantes in fide & dilectione quibus nobis tenemini, quod omni occasione postposita, & negotiis aliis prætermissis sitis ad nos Londiniis in octabis Sancti Hilarii proximo futt ris, nabifcum & cum prædictis Prelatis, & magna tibus nostris, quos ibidem vocari fecimus super promiss tractaturis, & consilium impensuris, & boc ficut nos & bonorem nostrum, & vestrum, necnon & communem Regni nostri tranquillitatem diligitis, mullatenus omittatis, Dorf. Clauf. 49 H. 3. M. 11. in Scedulæ.

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I strongly incline to believe, That this King did call in the Commons by their representatives, (the Barones Minares being, discharged) to moderate between him and his Barons, which he came after (to be fure, however it was before) the standing Representative of the people. Something like this, was before attempted by King John, by this Writ of King John, the like of which, is not found. Rex vicecomiti Oxoniz falutem; pracipimus tibi quod omnes milites Balliva tua qui summoniti fuerunt esse apud Oxoniam ad nora die omnium Santtorum in 15 dies venire facias cum armis Suis, corpora vero Baronum, five Amois fingulariter & 4 discretos milites de comitatu tue illuc venire facias ad nos, ad eundem Terminum ad loquendum nobiscum de Negotiis Regni nostri; teste meipso apud Written, 11 die Novembris. Dorf. Clauf. 15. Johannis Regis. Part 2. M. 7. But that Hen. 3. in that Parliament, had some notable Expedient for the Establishment of the publick Peace and Quiet. His Hopes and Defires of accomplishing it, will appear by the Stile of the fore-recited Writ, if compared with another Writ of Summons, in a Curfory Form, in the 26th. Year of his Reign, which was thus; Henricus, &c. Venerabili in Christo Patri Walter ro Eboracensi Archiepiscopo salutem; mandamus vobis quatenus ficut & honorem nostrum pariter & vestrum diligitis, & in side qua Nobis tenemini, omnibus aliis negotiis omissis sitis ad nos apud Londons à die Sancti Hillarii, in 14 dies, ad tractandum nor biscum una cum cæteris magnatibus nostris statum nostrum. nostrum, & totius Regni nostri specialiter tango tibus & hoc nullatenus omittatis.

But shortly, to deduce the History of the Change, (which is but conjectural) under the Authority of Mr. Selden, in which, nothing is certain, but that the Bishops continued the Change of the Baronage in the same Stated greatness mentioned, the same Order, had ther Writs of Summons continued to them as before; and, though many of the Regular Barons were after omitted to be summoned to Parliament, yet not one Bishop ever wanted his Summons. This Discrimination shews, That they were now Barons by Writ, as the Lay Barons were, and for the same Reason; that is, because Tenures did not now make them Barons. But fuch only were so, who had the King's Writs sent to them of Summons to Parliament': So that the Bishops are not now to be reckoned Barones fendales, or Barons by Tenure, but Barones rescriptitii, as all Barons at this day, except those by Patent, which are so, without any respect to Tenure.

The Feudal Baronage, as we said, was as large, and as numerous as the Tenures by Knights Service in Chief, which were capable of being multiplyed several ways, for every part of the Fee however divided, the Services reserved upon that Fee, that were entire and indivisible, were to be performed by the several Proprietors of the several parts of the divided Fee.

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The Feudal Baronies besides, were ambulatory, not fixed to Families; but assignable, as Estates, and passed with the Lands. Who sees not, that by this Constitution and Nature of Baronage, a great many mean persons, not agreeable to that high Order, must be entitled to it, and so in truth it happen'd? And hereupon, a Distinction was made first between Barones Majores, Barones Minores. The Barones Minores, soon lost the Title of Barons altogether. This is conjectured, by Mr. Selden, to be before the latter end of King John's Reign, and their legal Stile became Milites, or Libere Tenentes; which some, upon a mistake, anticipating the Change of the Government, made in H. 3. time, think, when they meet with Milites, or Libere Tenentes in Parliament, they have found Knights of the Shire, chosen for Representatives in Parliament.

And, if they retained the Name and Stile of Barons, it was now but abusively applyed to them; for, their Baronies were in Truth estimable, but as Knights Fees only: and, of this fort of Barons, there remains some to this

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This appears by a Passage in the grand Charter of King John, made in the latter end of his Reign, as it is in Mat. Paris, 343. Ad habendum commune concilium Regni, de auxilio asidendo aliter quam in tribus casibus prædict. (these three Cases of Aid to make the Eldest Son a Knight

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of Aid, to marry the Eldest Daughter, and bein por of Ranfome are understood here, as is plain prò the Charter) Et de soutagiis affidendis facien Jammoneri Archiepiscopos, Episcopos, Abbates, c. ther Tall mites & majores Barones Anglia figillatim per ded. veras nostras. Et præterea faciemus summonering levi nerali omnes alios qui in Capite tenent. This wa bish one Step to remove these Barones Minores, from gef But the Dignity of Barons; which by H. 3. wer quite discharged, and never appeared after in Parliaments, except chosen Knights of the Shire But because I find this great Charter of King John, not well understood by Teveral confidence rable Writers, nor by Mr. Selden explained, 1 will offer my Thoughts, and the rather, because it is not impertinent to our present purpose The first part to which the part before recited, doth refer is thus: Nullum Scuragium, velauxilium ponam in regno nostro, nisi per commune concillum Regni nostri nifi ad corpus redimendum, Edd primogenitum filium nostrum militem fatiendum & all primogenitam filiam nostram semel maritandum, Gad hoc non fiet nife rationabile auxilium; and then follows, & ad babendum Concilium Regni aliter quam in tribus casibus prædictis & scutagils affidendis, &c. "I conceive, that by the fint Commune Contilium, he means the Curia Regis; and that he did grant that out of that Court, he would not impose Escuage, or aid upon his Tenants, except it were those three Cases of Aid mentioned. For Escuage was then and a ter assessed in that Court (and that properly, as being

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being in general due by their Tenure, the Opportionment was there to be made, which was proper for the King's Tenents to do amongst themselves) until the Statute of 34 E. 1. de Tallagio non concedendo; in which it was provided, that no Tallage, or Aid, shall be put or levied without the Will and Affent of the Archbishops, Bishops, Earls, Barons, Knights, Burgesses, and other Free Commons of the Realm. But by this Charter it was provided that all Aids other than those three mentioned Aids, and Escuage, which were due by Tenure, should be levyed by the Commune Concilium, that is, a Parliament: the manner that he directs in his Charter how this Commune Contiliam Thall be conven'd, befpeaks it a Parliament, for he there declares, how he would have it furnitioned as to his Baronage, who in that part of his Charter, were to receive their Satisfaction; and for the Liberties of fending Hurgesles to Parliament, they are likewife confirmed in the fairle Charter; and therein provided for. So that I am perfuaded, that the modus Parliamenti, in King John's Time, was in the faid Charter declared.

It was probable, that before this Charter, there was some Law to declare who those Majores Barones were, and who those Tenants in Chief were, that should be accounted now, no longer Barons; and after the Tenants in chief had lost the Honour of a particular Summons to Parliament, and the Stile of Barons, it was less difficult

difficult for those Great Barons, to procure Law to exclude them wholly from having a Right to fit in the Parliaments under the name of Tenant in Chief only. And to the purpose, doubtless, saith Mr. Selden, some La was afterwards made, that none should comen Parliament, as a Baron, (that is, by vertue of his Tenure) but such as should have several Writs of Summons directed to them; in which number, not only all those of the Ancient and Greater Barons were comprehended; but others to whom Writs should be directed; which is in effect, that no Tenure should any longer make a Baron of the Kingdom; but that the Writ of Summons only should make a Baron.

It is not improbable for the reasons aforementioned, that fuch Law was made about the 49 H.J. and farther, for that we find, that the Abbot of Leicester, in the 26 E. 3. was discharged from being fummoned to Parliament amongst other reasons, that he was not summoned to Parlament before the 49th year of H. 3. and after that Interpolatis vicibus; as if part of the Constitution had been that those of the Ecclesiasticks, who at that time were accounted the Barones Majores; so declared by having Writs of Summons to Parliament, should have Writs of Summons to Parliament, thence after in Succesfion: And herewith agreeth Mr. Cambden, Brit.fo. 122. Henricus tertius ex tanta multitudine quæ seditiosa & turbulenta fuit, optimos quosque rescripto ad Comitia Parliamentaria evocaverit,

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ille enim (ex satis antiquo scriptore loquor) post magnas perturbationes, & enormes vexationes, inter ipsum Regem & Simonem de Montfort, & alios Barones, motas & Sopitas; statuit & ordinavit quod omnes illi Comites & Barones, Regni Anglia quibus ipse Rex dignatus est brevia summonitionum dirigere venirent ad Parliamentum. non alii, nisi forte Dominus Rex alia illa Brevia eis dirigere voluisset. And this being begun about the end of Henry the Third, was perfected and continued (faith Mr. Cambden) by Edward the First and his Successors. This Author feems to be of very great Authority with Mr. Cambden: The Objections made to his Credit by Mr. Selden, who is pleased to fix this altera-tion to King John's time, not long after his Great Charter, Titles of Honour, fol. 713. are eafily removed. They are thefe. In all occurrences (faith he) that I meet with since that Grand Charter, I find no mention of any Interest that those other Tenents in Chief, eo nomine, had in Parliament, who doubtless were the Per-Sons that were excluded from it when soever any such were made. And besides we have some good Testimony of Barons being distinguished, by holding in Chief from some others that held not in Chief, long before the end of Henry the Third (or the time to which that Ancient Author refers the Law of alteration which seems to shew that there were then Barons by Writ only (according to the purpose of the Law we mean here as well as ancient Barons by Tenure, &c. and that difference Mould should most properly follow such a Law as we no dispute of. That Old Author also used by the Learned Cambden, Speaks of Earls no otherwise than of Barons, as if some like Exclusion had been of any of them also; than which nothing can be more adverse to the known Truth, both of that Age, and all times, &c. These things (faith he) and what we have already noted, perswade me to give little Credit to that Relation, but rether to conclude, That not long after the Grand Charter of King John (like enough in his own time) some Law was made that induced the utter Exclusion of all Tenents in Chief from Parlia. ments, besides the ancient and greater Barons, and such other as the King should in like fort Summon.

These are Mr. Selden's Objections against the Authority of this ancient Author in the matter in which we have recited him out of Mr. Cambden.

But these Objections are easily removed, I say; If it be remembred, That the Great Charter of King John provides that the Barones majores, which comprehends Earls, should be Summoned Sigillatim. Besides Curatio indicat morbum. The omitting to Summon the great Barons to Parliament was one of the great causes of the Barons Wars. We have known of late times a Writ of Summons to Parliament resused to a great Earl, and attempts to make the State of the Baronage ambulatory since it hath been fixed by the Great Charter of King John; and by the remembred constitution which Mr. Cambden's ancient

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ancient Author fixeth with great probability at the latter end of the Reign of 41.3. And yet this is one (it feems) of the Objections that Mr. Selden makes against the Authority of this ancient Author (viz.) for that he speaks of Earls no otherwise than of Barons in this matter.

It must be noted also, that after King John's Charter, tho' not before, we hear of milites & libere tenentes in our Parliaments, which was the style in this interim of the Tenents in Capite, the Barones minores. And therefore we have fome mention of the Interest that those other Tenents in Chief, or the Barones minores eo nomine had in Parliament, tho' Mr. Selden speaks as if they had none, and thence concludes they were shut out soon after King John's Great Charter. It must be likewise remembred, that there was also Barons not so by Tenure, but called at the pleasure of the King by his Writ to Parliament, called therefore Barones Regis, which we have before observed, and that long before the end of the Reign of Henry the Third (faith Mr. Selden) nay, in the Reign of King John, and before his Great Charter. This was a Grievance (as we have observed) to the Old Barons by Tenure, called the Barones Regni: but not redressed by the Great Charter of King John, as we have likewise observed.

But after the time of Henry the Third it became part of the Constitution of the Government, that the Kings Writ should make a Baron.

By which the reason of Baronage was changed
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from that of Tenure to that of being called by Writ to Parliament. But when that was done no Earl I believe was left out, or refused his Summons, and degraded with his Family from the Order of Baronage; and therefore it is no Argument against this change, at this time made (as we say) in the reason of the Baronage, that we have no Record of any Earl shut out of the Baronage.

And by this new change in the reason of Baronage, it was not now any longer matter of due complaint or envy amongst the ancient great Barons, that new Barons should be made at the Kings pleasure by Writ or Letters Pattents: And this point of the Prerogative, of making new Barons, was now cleared and established.

This alteration in the reducement of the Barones minores, and excluding them out of Parliamentary Conventions eo nomine, was in some fort compensated by substituting Knights of Shires in the place of the vast number of the Barones minores, as we before observed.

This change and alteration I believe was in fieri from the time after King John's Charter, and under consideration, and that some Essays were made towards this change in that interim is probable from the afore-mentioned Writ to the Sheriff of Oxford in the sisteenth year of King John's Reign. And that it continued under deliberation in that time appears surther from the Great Charters of Henry the Third, wherein that part of King John's Great Charter afore-

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afore-mentioned relating to the great Council are omitted.

For if some great alteration therein had not been at that time meditated by the King and the Grandees, and promoted by an universal defire of the Realm; that part of King Jahn's Charter which relates to the great Council of the Realm, the Grievances thereby provided against being the greatest Causes of the Barons Wars, would certainly have been confirmed.

That the afore-mentioned alteration in the Constitution of our Parliaments was made about the latter end of the Reign of Henry the Third, hath the Authority of Mr. Cambden, and of our great and worthily renowned Antiquary. Sir Henry Spelman in his Glossary, word Parliamentum. Sine (saith he there) ut sodes dicam collegisse me centenas, reor, Comitiorum edictiones, tenoresque plurimorum ab ingressu Gulielmi ad excessum Henrici existentium nec in tanta multitudine de plebe uspiam reperisse aliquid.

Against an affertion so seriously pronounced by so Worthy an Author against an induction so made by a most diligent and Learned Antiquary; the loose, uncertain, and inartificial style of an Historian or two that make mention of Plebs and Populus in their stories of Parliaments, can be of no regard: Since whether the Plebs were within Doors or without, whether they had suffrage in the great Council, or gave their approbation without in tumultuous noises, they do not always distinctly tell us so, tho' sometimes

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they do, and that their affent was their apporting without doors what was done in Parlis, ment with loud applauses and acclamations.

That the Conventions of the great Counce were attended with Tumultuous heaps of People in favour of the several Factions in those Assemblies is so notorious, that it cannot be dissembled. To this the People were the more apt at this time, if they had not been therefor instigated by the Factious Grandees, because they were not then represented in the great Councils of the Kingdom, by men of their own chusing. In the determinations of such they would have had reason to have been more secure, to be less sollicitous about their results, and quietly to expect them at home, as we see they do at this day upon this blessed change.

But it is greatly observable, that this more equal and clear Representative which we now enjoy grew upon the reducement of the excessive number of Barons, which we before noted. For in the Parliament of 49 H. 3, when but twenty five Lay Barons were Summoned (tho' in the 41 year of his Reign he numbred two hundred and fifty great Barons in England) we find Writs for Electing Knights of Shires. The Interest and benefit of the King and Commons in this change, we have before and after observed. Besides it is without Contradiction and Objection clear, That the Barons at this time were thrown out of their Juridical Authority. The Curia Regislost its Jurisdiction, and was cantonised into our present

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present Great Judicatures. And the Office of the ancient Capitalis Justitiarius who presided amongst the Barons in the Curia Regis was reduced.

I think it upon the whole matter, for the Reasons we have given, very fairly probable that our present Parliamentary Constitution was

at this time established.

But I cannot believe it obtained by Rebellion, as some bad men, Enemies to our Religion and Government, designfully and maliciously in this Age suggest. For that this change was promoted by a universal consent as an expedient for quieting the Nation, and extinguishing Wars between the King and his Barons, and did really secure the King from the attempts of the Barons in all after-times, and from such Wars which had been for many years so afflictive to the Nation.

And as fure I am that they who go about now to refix this establishment upon a pretence that it was introduced by War and force upon the Crown, have use now for another sort of War, to bring about designs equally mischievous and unnatural to the Nation: But they will sooner destroy themselves than obtain their ends, for there is Wisdom and Virtue enough yet left in the Nation, notwithstanding all the Arts that have been used for many years to deprave and besool the Poople of England, to save the Nation, and preserve the present Government and Religion.

CHAP. XVIII.

So that it appears clearly, that the Feudal Ba. ronies about this time were quite discharg. ed fo far, that no man by a feudal Barony had any Right to fit in Parliament; and those that were feudal Barons before this time, by the Alie nation of their Baronies afterwards did not cease to be Barons: But for that the Majores Barones, and fuch as had then Writs of Summons, and were appointed to make the House of Lords for after-time, were then Barons by Tenure: It continued an Opinion some time, that no man was bound to answer such Writs of Summons; but those that were bound thereto by their Tenures; thence it was, that after this Constitution, many that were feudal Barons before, have taken a Liberty to entail their Baronies with the Lands that were held per Baroniam, upon the Heirs Males, whereby the Heirs general, or next Heir Female were excluded; and an Heir of the half blood hath enjoyed the Honour with the Lands by vertue of We will trouble the Reader with the Entail. one Instance of this kind, and that is as late as Q.E. William Lord Paget of Beaudesert, entailed the Baronies of Longdon and Haywood, by Fine, which descended to Henry his Son and Heir, who had Elizabeth his Daughter and Heir,

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Heir, died 11 Eliz. after whose Death, Thomas Brother, and Heir Male of Henry, by vertue of the Entail, entred into the Baronies aforesaid, and was Summoned to Parliament. This was allowable, because the Honour of the Name and Family was thereby better supported, and the Office of a Baron continued in the Family; and the Duty of it better performed by such direction of the Descent.

And we do also observe, that after the reafon of being a Baron from Tenure did cease, the following times kept the Old Form of Speech, & tenere per Baroniam, was the style used commonly to denote a man a

Baron.

That the Law is as we have said, appears for that an Issue at Law, whether Baron, or not, ought to be Tryed by the Parliament Records of his Summons and Session there as a Baron, and not by the Records of the Exchequer to prove the Tenure. I will not therefore trouble the Reader with what is reported to us in our Year-books, nor my felf in reconciling the feeming difagreements there about this matter. only thus, that the Judges have sometimes spoken cum vulgo, and not agreeable to the true notion of the Law, and that they did not judge according to Law in the Case of Thomas de Furnival. But, the Barons their being anciently first so by Tenure did so stick with the Judges, that they allowed Thomas de Furnivals Plea, that he did not hold per Baroniam, to discharge him from being

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being a Baron, though he had been Summoned as a Baron, and fat in several Parliaments as such But of this more hereafter.

For that which now made Parliamentary Barons was, the receiving of a Writ of Summons to Parliament. Before the 49 H.3. The Bishops were of the number of those that were majores Barones, and had Writs of Summons to Parliament among the rest of the great men, before the making of the Law aforesaid; and they by this new Constitution became Barons for them and their Successors, not by Tenure any longer no more than the great Lay Barons, but by virtue of the Writ of Summons, and by the afore remember'd Constitution and Law made some time about the 49 H.3.

And though the Lands of the Bishops in the time of the Conquerour, which were put under that Tenure, be alienated or exchanged as they might have been, I am sure if they are not, before the Statute of Queen Elizabeth put a restraint upon them, yet the Succession of the Bishops in the

shops to their Baronies remains.

It is a question I know, whether a Bishop can demand his Writ to Parliament, before the restitution of the Temporalities, upon his Consecration: there are valuable Opinions on both sides; but if the restitution of the Temporalities must be first made, it is I conceive upon no other reason, than that he is not completely Bishop before that is done, no more than a Rector is a complete Rector after Institution before

fore Induction be made; though he ought (I conceive) to have his Writ upon Confecration, because upon vacancy of the See, the Guardian of the Spiritualities used anciently to have a Writ of Summons to Parliaments; as Diocesans

themselves.

And now the Baronage Secular is affixed to Families, and the Spiritual Baronage to the Office and Succession. And now Birth designs the Temporal Baron, and Confectation of the Bishop designs the Spiritual Baron; nay, single Election without Confirmation or Confecration If elected only, they were fummoned to Parliament by the addition of Electi; if confirmed and not consecrated, then they are in the Writ of Summons ftyled Electi & Confirmati. And Mr. Selden further tells us, that there never was any that had the Title of a Bishop in England, and of the Kings Creation fince the Normans, but was a Baron of Parliament; and though the Regular Barons, and fuch of them who had Writs were discharged upon their Prayer, and omitted to be Summoned: Yet the Bishops by reason of their Spiritual Dignity had necessarily a Right and Voice in Parliament. The Archiepiscopi, Comites, Barones, & alii Magnates, in ancient Parliamentary Writs of Summons, do ordinarily express and comprehend the whole Baronage, without naming the Abbots and Priors, which must needs be signified by the alii Magnates. Which I the rather note, because the Folio Author, a Gentleman very easie and ready

ready in Inferences, doth conclude, that because fuch Writs mention Magnates, besides Bishops, Comites & Barones, (which he too suddenly concluded were comprehensive of the whole Baronage) doth thence argue, that a Writ of Summons of any man to Parliament doth not make him a Baron; and from thence would have it inferred, that the Bishops are not so, (though they are expresly mentioned, and first in order, and cannot in reason be reduced to that meanness of rate and quality with those that fall under an Et cætera;) and from hence would have it concluded, that they may, when the King pleaseth, be dismist that House, because there were anciently fome Grandees that had Seffion in Parliament now discharged.

Besides we do observe, that another sort of great men may be meant by the alii Magnates, that is to fay, famous men of the Clergy, not Bishops, and other men of great name for wisdom, of which there were fome Summoned in most of the ancient Parliaments, not intended thereby by the King to be made Noble, or advanced to the state of Baronage; for there were distinct clauses in the Writs of Summons, to fignisie the Kings purpose therein. The Writs directed to fuch as were not intended thereby to be made Barons, as the Judges, Attorney General, Kings Serjeant, &c. was, Quod intersitis nobiscum & cum cæteris de Concilio nostro; and sometimes nobiscum only, super præmissis tractaturi, vestrumque consilium impensuri: whereas that to the Barons

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Barons was, Quod intersitis cum Prælatis, Magna-

tibus, & Proceribus, &c.

But, as Mr. Selden observes, that custom of sending Summons to great men (not Bishops) to Parliament, did cease after the clause of Præmunientes (by which Convocations were Summoned by Bishops to meet with Parliaments) grew in use, in the Bishops Writs of Summons to Parliament. Of which excellent Provision we shall have occasion to speak to hereafter.

All the Baronage, both Spiritual and Temporal, de jure ought to have Summons now to Parliament, without respect to Estate or Te-

nures.

There is no man now Noble by his Acres, a fort of Nobility, that this refined Age will not allow of. The King, according to the Constitution of H. 3. afore-mentioned, may now, by Letters Pattents, or Writ, erect a new fuccesfive Barony (as well as hereditary) as was done by H. 8. The fifth year of his Reign (for that the Baronage of England was now affixed to Family and Succession, and not to Tenures) he by his Letters Pattents did then grant unto Richard Bamham, Abbot of Tavestock, in the County of Devon (the Abby being of his Foundation and Patronage,) and to the Successors of the said Abbot, Ut eorum quilibet qui pro tempore ibidem fuerit Abbas sit & erit unus de Spiritualibus & Religiosis Dominis Parliamenti nostri hæredum & Successorum nostrorum gaudend. honore, privilelegio & libertatibus ejusdem.

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This the King might well do, because, the Abbot was of his Patronage, and the Successors were therefore to be elected and collated by the King; for, that was the Inducement and Reason of Kings and Sovereign Princes advancing Bishops and great Abbots to the degree of Baronage, making them Members of the great Councils of their Kingdoms and Principalities, as is before observed, because such Abbots as the Bishops, were made always, and appointed by the Sovereign Prince.

And here we may take notice by the way, of the Reason, why the Episcopus Soderensis, or, the Bishop of the Isle of Man, is not Summoned to Parliament, which I shall give you in the Words of Sir H. Spelm. in his Glossary, Baronum appellatione non omnes hodie apud nos censentur Episcopi utpote Soderensis in Insula Mannia; quod de Rege non tenet immediate at de Comite

Darbiæ.

Nay, it is most observable, That this Honour of Baronage, or being a Member of the House of Peers, was so inseparable to the Office of a Bishop, after the afore-mentioned new Constitution of the Baronage, That the Guardians of the Spiritualities of Bishopricks in the times of Vacancy, and the Vicars General of Bishops being beyond Sea, were Summoned to Parliaments by the same kind of Writs as the Bishops were Summoned. Of this Mr. Selden doth assure us; Titles of Honour, 2 Edit. fol. 721. But this Honour lasted no longer than this Legal Substitution,

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tion, and Vicarious Power. If they had Right to fit in that House, in respect of their Temporalities, the Guardian of the Spirituals, or the Vicars General, would not have had Writs of Summons to Parliament. But, if the Kingdom had not had a great Opinion of that Order, it would not have been so provided, and put in use. In the Vacancy of the See, or Absence of the Bishop, rather than that great Council would want one Bishop utterly, or the Interest, Authority, and Consent of any that had Episcopal Authority, they admitted the Substitute, by whom that Office was executed and administred for that Interval only.

When Baronies were feudal, the Person, those in respect of his Land, was Noble; his great Estate and Interest, and the other general Presumptions that attend opulent Fortunes, made

the Possessor Noble in his Person.

Anciently the Estate; of late, the Descent, in the Temporal Baronies; and the Succession in the Spiritual Baronies, place the Persons respectively in the Census and Rank of Baronage: but there is no Nobility but what is Personal, nor can be in Nature. All the Persons in the same Order of the publick Census, are of the same Quality.

Neither are Bishops to be accounted less Barons, or less Noble, because they enjoy their Baronies for Life only, no more than a Tenent for Life of an hereditary seudal Barony could be so accounted. Feudal Baronies being consi-

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dered as Estates were alienable as Estates, and as Estates would suffer Limitations, and admit of particular Estates for Life. No man can say we had no personal Nobility in the time when there was no other Baronage than Feudal. How then can it be said, that the Bishops Persons are not Noble, though they should be accounted only Barons Ratione Tenuræ, as certainly they are not in proper speaking, at this day, neither can it be objected against their Personal Nobility, that a Bishop may be degraded; for, so may a Peer for more Reasons than a Decay of his Fortune and Estate.

Which matter, I the rather insist upon, for that the great Mr. Selden committed this Error and mistake, that the Persons of Bishops are not Noble, by not considering, that the ways and means by which Persons derive and come to be of the Order of the Nobility and Baronage can make no difference in the Baronage. But thence he offers a Reason (which must needs be a mistake too) why Bishops shall not be Tryed by Peers, in Capital Crimes (viz.) because these are Personal; and his being a Baron is Ratione tenuræ, and not Personal Nobility. But this he wrote when he was young, in his sirst Edition of Titles of Honour, which was in the time of King James.

But, can there be a harsher and more incongruous thing said, than that there is any other Nobility than what is Personal? Can Land be

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This that I have said, is to prove, That the Spiritual Lords are of the Baronage of England, such as it is now constituted; and, they do not, cannot remain in any Reason or Understanding, Feudal Barons, after the Ratio Baronagii is changed, and if they could remain Barons Ratione tenuræ at this day; yet, they ought to have all Preheminencies and Priviledges of Barons.

But, true it is, that they are another fort of Nobility, different from that of the secular Lords (though equal in all the powers of Baronage; and besides, have precedency in Honour) and therefore make a distinct State from them, and one of the three Estates, or Ordines Regni. Besides that, by the way, we have destroyed the Force of the Arguments used by the Folio, against the Jus Paritatis of Bishops, and their Competency to try a Lay Peer, which we shall speak to more by and by.

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CHAP. XIX.

In the King, and in these three Estates, is placed the Peoples Security, and the Care of the whole Community: from every of them we have distinct, just, and reasonable Expectations, though the third State of the House of Commons, hath carried away, and almost ingrossed the name of the Peoples Representatives, though they are only the Peoples Representatives, to act for them, in matters wherein the People are lest at perfect Liberty; and concerning which, there is no Order taken in the Constitution of the Government.

This is truly Our Government, a King, and Three Estates, the Lords Spiritual, the Lords Temporal, and the Commons, by their Delegates and Representatives in Parliament for the purpose only to treat about matters, in which, the People have Power to deliberate, and are, and ought to be redress'd.

This is the Form of all the Modern and Gothick Governments, planted in Christian Europe. Guntherus expresseth the three Estates thus:

Prælati, Proceres, missique Potentibus Urbes.
The great men of Estates, Proceres, were sufficient to take care of their Interests and Dependents, which made the Body of the County. But then there were Cities or great Towns,

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in which were great Bodies of Freemen, men of Wealth and Trade, that were little concerned in Lands and Tenures, which we call Liberi Burgi, which our Neighbours call Hans Towns: And our Kings feem to have by Prerogative a continuing Power to declare Towns, when they arrive to be great, peopled, and rich, Free Boroughs; and thereupon they acquire a Right to fend Delegates to Parliament: And this appears, for that many Boroughs that fend Burgeffes to Parliament, have no other Foundation of Right, but the King's Charter; in which he grants, Sit A. de Cætero liber Burgus, I have feen fome of these Charters as ancient as King John. These Charters could have had no such operation, but by vertue of some Ancient Establish ment in the Government: We have no History of its Commencement. King William I. that he might have the Assistance of all the States in Parliament, put the Boroughs under Tenure by Baronage. How many of the Burgage Tenures were of that fort, we know not; but it is probable all of those Borroughs, that at that time fent Burgesses to the Parliamentary Conventions by what name foever they were then called: the Burgesses of the Cinque-ports, are still called Barons. And we know, That the Borrough of St. Albans was put under that Tenure, and in that Right challenged to fend Burgesses to Parliament, as Dr. Brady acknowledgeth. But the reason why we have P 2 no

no remembrance of the Tenures of Boroughs to fend Burgesses to Parliament, is that which we have here proved, viz. the ancient reason of Baronage, viz. Tenure, did cease about the time of H.3. And conformably the King might require Boroughs to fend Members to Parlia. ment, without mentioning in his Writs the duty of their Tenure; and by declaring them free Boroughs, give them that Priviledge, though he did not oblige them thereto, by any Tenure created upon them. So that it is evident, that before H. 3. our great Councils, or Parliaments confisted of three Estates, though they all pass'd under the general Stile of Baronagium Angliæ; which I thought fit to mention, thence to demonstrate, that our Parliaments, or great Council of the Realm always confifted of three States.

Corol. From this, that the King's Prerogative being so, viz. to have power to declare Free Boroughs, which he useth by his Letters Patents: The Right of choosing their Burgesses to Parliament belongs to all of the Community, and cannot be restrain'd to sewer Electors by their Charters: For Jura ordinaria non recipiunt modum.

Some Remainds at least of this Form of Government, continue in all the Countries wherein the German Colonies made their Conquests, and planted themselves, as will appear to any body that will consult the Republicks, and those

those plentiful Quotations that have been made by a Learned Author in his Book, published since this was written.

I cannot but wonder, fince this our Constitution hath been often most authentickly declared; and every one knows, that the Government is materially so as we have said; and it is agreed by all, that the Government consists of three States; that yet we know not where to find 'em.

There is much Art used to give Countenance to, or rather to form an Opinion that
the King is one of the three States. It is now
almost come to be an Opinion; and insomuch as it is an Opinion, it is an Error. This
Error, such as it is, is endeavored to be improved to the Destruction of the Government.
It is nurs'd up carefully, and is to gain Reputation and Credit with the People, by the Authority of great Names; and when it is grown
popular, it is designed to take the least next
Advantage against the Spiritual Lords, to dismiss them from their Bench, as no necessary, or
essential part of the Government.

There was, it's true, an ill-pen'd and inconfidetate Address, made by the House of Commons only to the King in 2 Hen. 4. to desire him to make Peace between the Lords, and therein they say, that the three States of Parliament, are the King, the Lords Spiritual and Temporal, and the Commons: But this is the first

time, that an Address of a House of Commons was fo nicely confidered: And that the Form and Letter of it should be the measure of Law and of the Government. There was also a phantastick Letter, written by Stephen Gardiner, Printed it seems in the Book of Martyrs, wherein that Bishop talks of three States, in which we must needs reckon the King for one: For he could not leave him out of the Government; and he had no more Christian Graces than Faith, Hope, and Charity, which he attributes to this Ternary of States of his own making. But if there had been four of those Graces, there had been four States, if fix of those Graces, to have match'd them in number, he would have found three States in the House of Commons, viz. Knights, Citizens, and Burgesses, and have made fix States.

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It seems too, King James made a Speech in Parliament, wherein, he was pleased to use his Logick; and liked, it seems, the Ramistical way of Dichotomies. The truth is, he had more Logick than a wise King could tell how to bestow. For in that Speech, he saith, The Parliament is Composed of a Head and a Body, Himself and the Parliament. This Body is sub-divided into two Parts, the upper House, and the lower House. The upper House into two, Lords Spiritual and Temporal; the lower House into two, Knights and Burgesses. The Citizens were left out for the sake of his Dichotomy. His Method

thod was to proceed by the way of Two's; and therefore 'twas impossible we should hear in this Speech of any three whatsoever; yet this Speech too, is produced against three States di-

stinct from the King.

Besides, they tell us, that in one of the late King's Declarations, drawn by (then) a young Gentleman, but of great hopes, and afterwards a very great Man; the King is called one of the three States. This Gentleman was very probably misled into that Mistake, by a Book called Nomotechnia; wherein it is said, that the King, Lords and Commons are the three States: a Book of Institutions for young Students, which was never yet allowed for Authority in the Law; nor ever had the Honour to be cited in our Courts of Westminster.

These Mistakes or whatever you will call them, with the Authority of the Octave Author, are united together to form an Opinion, That the King is, but the Bishops are not, one of the three States, which will be a very dishonourable Errour: For that it will lead us into a Mistake of our Government, and (which is much worse) for that it hath a tendency to subvert it (that is) to depress the King, and to suppress

the Bishops.

It is an Indign thing, and not to be fuffer d, that we should lose our Government by Surreption, and be made a Babel, by dividing and consounding our Language. To prevent this mischief.

mischief, we have declared our Government, from the very Reason and Nature of the Structure thereof, to consist of three States, that is, three different Orders, which make the Great Council of the Kingdom; whose End and Business, is, to administer Council and Auxiliaries to the King, who is intrusted with the executive Power of the Government and Laws.

And now we will produce great Authorities, to put this Mistake out of Countenance, and to prevent its gaining any farther Authority with the People. For Errors of this nature, in process of time, turn into Truth, and things prove to be so at last, as the Error and Mistake first bespake them; and this our Lawyers know well enough, with whom its a Maxime (it belongs only to them, and matters within their Province) Com-

munis Error facit Jus.

And first, for this purpose, we will mention the Stile that the Parliament used, which was convened by the Authority of Richard the Second, he being then about to relinquish the Crown to H. 4. This Parliament, in transacting so weighty an Office, had reason to consider and know who they themselves were. They, without doubt, in all their Proceedings in this High Matter, used their true, as well as biggest Stile, which was that of States. Walsingham tells us, Sede Regali tunc vacua Procuratores Regis Richardi, Archiepiscop. Eborac. & Hereford. Remanciationem disti Regis & cessionem omnibus statibus

And again, Quoniam videbatur cunctis Regni statibus super dictis Articulis singulatim, ac etiam communiter interrogatis. And again, Ordinati sunt Commissarii ex parte statuum & Communitatis ejustem Regni. Observe here, that the King is none of these States; that they are called all the States, which signifies more than two; that there is mention of States, besides Community; and therefore, it was then understood, that there

were two States in the Lords House.

But afterwards he recites us the Form of a most important Instrument, which follows. In Dei nomine, Amen, Nos, I. Episc. Assauents, I. Abbas Glasconiensis, Thomas Comes Glocestriae, Thomas Dominus de Berkley, Tho. de Epingham, Tho. Gray Miles, Willielmus Thirning Justiciarius, per Pares & Proceres Regni Angliae Spirituales & Temporales & ejustem Regni Communitates, omnes status ejustem Regni Representantes Commissarii, ad infrascripta specialiter deputati, & c. By which it is most clear, that the Government was then understood to consist of three States, of which the King was none, as he could not be with any Congruity in this Case.

I R. 3. Rot. Parl. apud Westm. die Veners 23 Jan. it appears, that a Bill was exhibited coram Dom. Rege in Parl. Wherein is contained, That several Articles on the behalf, and in the name of the three States of the Realm, viz. Lords Spiritual, Temporal, and Commons, were delivered

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to the King. And farther, that the faid three Estates were not assembled in form of Parliaments; therefore be it ordained by this present Parliament, that the Tenor of the faid Articles delivered as aforesaid, on the behalf of the said three Estates out of Parliament, &c. Now by the three Estates assembled in this present Parfiament, be the same ratified and approved, Ac idem Dominus Rex de assensu dictorum trium statuum Regni & Authoritate prædicta, omnia & fingula præmissa, in billa prædicta contenta concedit, E ea pro vero & indubio pronunciat, decernit, ac delarat. This was in like manner an Act of Parliament, for declaring the Right of the Crown to be in Rich. 3.

In the Statute made 2 H. 4. the Word State is used plurally, and for more than two, of which the King was none, to signific the Parliament, as appears cap. 15. And fo it is also in 4 Hen. 4. cap. 4. in which these words are, Sith it is the defire of all the States of the Realm, that nothing shall be so demanded of our Sovereign the He will that all those who make any Demand, &c. So that hereby it is evident, that in the Understanding of that time, there were three States besides the King. But to spare the Reader the trouble of the mentioning the Records at large, that testifie the Parliament to confift of the King and the three Estates, viz. Lords Spiritual, Lords Temporal, and Commons, I will refer them that doubt to the ColCollection made in Mr. Pryn's Index to Sir Robert Cotton's Abridgment, under that Title (who himself was of this Opinion, which nothing but the Evidence of the truth of the thing could have form'd:) His great Knowledge in Records; and that he is known, not to be partial for the Bishops, make him of great Authority, pages 10, 11, 12, 13, 14, 17, 329, 384, 325, 281, 392, 567, 607, 710, 712, 713, 714.

And farther, in the Time of Queen Elizabeth, in an Act of Parliament, in the first Year of her Reign, made for the Recognition of Her Queen of England; which was an Act of State, and of the whole Community; and therefore most requisite it was, that that Parliament should give themselves their right Stile. It is said, We your said (the Lords Spiritual, Temporal, and Commons in Parliament assembled, was said before, to which this doth relate) most loving Subjects, representing the three States of your Realm of England.

The Nature of the Government came directly at those Times, under Consideration of Parliament, which is an Assembly that cannot be
mistaken in the Constitution of the Kingdom
in a Question of such a Nature, wherein they
are obliged to deliberate and consider. This
mighty Assair required them to consider who
they were, and what was their Constitution.
Now (if at any time) they are to use that Stile,
that denotes their Power, and declares the

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Realm, it seems, is too sacred and great, and not for ordinary use, but for that it is used upon such occasions as the Recognition of Sovereign Princes, and in declaring Kings. This Stile is therefore most certainly declarative of the true Constitution. The great Stile and Title of the Lords Spiritual, Lords Temporal, and Commons of England in Parliament. A Misnosmer now would be as great a Solecism, as to see the Nobles and Prelates without their Robes, and proper Cognizances, at the Solemnities of a Coronation.

By the due comparing the Statutes aforemention'd, wherein the Lords Spiritual, and Temporal, and Commons, are called the States, and also the Representatives of all the Estates of the Kingdom. We may be enlightened into a great Mystery of State; for that the Lords Spiritual, and the Lords Temporal, and Commons, are called the three States; and also the Representatives of the States. It gives us to understand, that every one of them is entrusted for the other and with the Conservancy of the whole Community, and are all in their proper Ministries defigned to the Common Good; each of them have Dependencies and Expectancies from the other, in the due Discharge of their proper and distinct Offices. And every of them therefore Representatives of the other. That the Lords Spiritual, and the Lords Temporal, are respectively Representatives and Trustees for for the Peoples Good, and the Common-weal, as well as their own. In like manner, as every Parliament man, for a particular Borough, is a Representative of all the Commons of England.

To which we will adjoyn another great Authority, and that is of Sir Edward Coke, 4 Inst. fol. 2. who tells us, that the King and three Estates, viz. Lords Spiritual, and Lords Temporal, and Commons, are the great Corporation and Body Politick of this Nation. This was the Opinion of his Old Age, when he was most improved in Knowledge; and when he did not

flatter the Prerogative.

Besides, to clear this point, we may observe, that the Stile of Acts of Parliament, that hath mostly obtained, is this, viz. Be it enacted, &c. and by, and with the Advice and Consent of the Lords Spiritual, and Lords Temporal, and Com-This distinct mention of the Lords Spiritual and Temporal, is a Cognizance of their being distinct States: For observe, there is no particular mention of Knights, Citizens, and Burgesses, in Acts of Parliament; because they are all of the Commonalty, which is but one State. They are all involved under the general Name of Commons: And so would certainly the Lords, both Spiritual, and Temporal have been in the general Name of Lords, if they had not been distinct States, and so accounted. The Stile of Acts of Parliament, would have

have been by the Advice and Assent of the Lords and Commons assembled in Parliament: And the ancient Stile of Parliament, before the House of Commons was divided and constituted apart from the Lords House, was Clerus & Populus, Clerus & Magnates; as may be seen by Eadmerus, and Matth. Paris, and the Writers of those Times: So that the Clerus, or Bishops, were

always a distinct State in Parliament.

For the letting in Light upon all that hath been faid in this matter; and for farther clearing it, and to reconcile the Differences in the Stiles of the Parliament; and that they may unite in their Evidence, and not feem to thwart one another: It must be remembred, that that which is most express and particular, is most scientifical, and more exactly instructive, most distinct and true; and intends to inform us exactly in the very Nature of the thing; and therefore cannot be derogated from, nor prejudiced by what is more general, or less distinct.

It is hence therefore evident, that the Lords Spiritual and Temporal, are taken for distinct States, as they are: For they have their distinct Interests, and for several ends and purposes became parts in the Government. They have their several Ministries and Advantages to the Government apart, and come into that House, by several ways of Designation and Appointment. The Prelates care, besides that which is common between them and the Temporal Lords,

is that of Religion, and the Affairs of the Church, and the whole Order Ecclesiastical, by which the People are to be ministred to in their highest Concernments; which are Reasons very sufficient to reckon and account them a distinct State.

And now we have afferted to the Prelates a Jus Paritatis in the House of Lords, for that they are complete Barons, as we have likewise

proved them a distinct State.

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The Baronage of England is the House of Additions of Title give Precedency, but no Superiority or addition of Power. The Baronage is one Order and Rank, and the highest in the Census of the Government. Tho' the manner of the Promotion, and the Ends and Interests of the Government in the advancement, of the Bishops, are several from those that advanced the Temporals Lords to their State and Honour: yet to the same degree they are promoted. They are both Members, of the same great Council, of the same great Judicature; and by their long continuance so are most duely styled Pares And tho' the Bishops are considered as to their Order and Office Ecclefiastical, and that other care belonging to it incumbent upon them, besides that which belongs to the Lay Baronage; yet the Order that belongs to the consideration of the Heralds, doth signific that the Office of a Bishop doth not lessen the Dignity of their Peerage.

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What is it then that makes this present Question? The Bishops have the reason and nature of the Government of their side, they have used such a power when they have pleased, it was never denied to them, and their right hath had the most solemn Recognition that can be made.

The Canon could not abridge and restrain their right, and their true Character qualifies them not only to the degree of an unexceptionable Judge, but renders them most fit and desirable. For besides their Wisdom and Justice, common with that of the Temporal Lords, they are intended of the greatest tenderness and compassion, and must be so if they comport themselves with agreeableness to their Character and Function.

They are not ordinarily engaged in the Factions of the Temporal Grandees, and Religion being their business, they are more under the powers of it; that being their glory and their first greatness, that which promoted them to their Secular Honour and Dignity, and that which must support it. Their Interest is Religion, and therefore they are the more obliged in all their outward acts to comport with it. They, out of an universal charity, understand, that it is mercy and compassion to the innocent to punish the nocent person; and yet they can, in the administration of punitive Justice, attemper the severities of Laws with the mercies of Religion, and use Compassion to the Criminal when they

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they do not depart from the unrelenting Rules of Law, out of regard to the publick peace. And by such demeanour they may reconcile the Office of a Judge with that of a Priest, which some have thought incompatible. The trinks destrible incompatible. Synes. But they are no more inconsistent than Power and Authority, which united makes a most venerable Magistrate, and gives him the greatest advantage of serving the Community.

Quod violenta nequit; mandataque fortius urget Imperiosa quies.

CHAP. XX.

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A ND such a Judge would I chuse; but we must take such Judges as the Law appoints. Magna Charta is objected against the Bishops right in question, which saith, that Nullus liber homo capiatur, &c. nec super eum ibimus, nec super eum mittemus, nist per judicium Parium suorum. The Objector omitted to add or consider what sollows, viz. Aut per legem terræ.

But the Statute of Magna Charta is no Literal Law, as every body knows; but intending to confirm the Common Law, it is upon the matter Lex non scripta; it alters nothing that was the

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Common Law before, but that being found out, declares what Magna Charta establisheth. And therefore Peers shall be tried by Commoners in Appeals, notwithstanding the Letter of Magna Charta: for otherwise Peers might not be tried at all, and no Justice done in Appeals, which is the Suit of the Party, and not of the King. Privilege must be always set aside, rather than a saileur of Justice should be omitted. So that the Law before Magna Charta and since, whatsoever it is, must determine this matter.

The Provisions that the Law hath made, that the Nobles and the Commonalty shall not intermeddle to judge any persons not of their Order, is a most prudent Establishment, without which neither Order, Justice, or Peace could be preserved. The Envy of the Commons would render them unsit Judges of the Peers; and the Animosities of the Peers would render them unapt to sit in Judgment upon a despised Commoner.

Besides that, otherwise, the Dignity of the Order of Peers would suffer: for the Superiour can no more be judged with any congruity, than blessed, by the Inseriour. This is a reason big and wise enough to be assigned, and worthy of a wise Government and Polity. And to this reason the words of the Statute of 25 E. 3. cap. 2. de Proditoribus, do point, De ceo soit probablement attaint de overt sait per gens de lour condition.

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And therefore it seems to me, that, according to the Reason and Design of the Law, which declares the Law in particular Cases, (Bishops being Barons, and of the Peerage of England, and of that Rank and Order) they ought to be tryed by those of their own Condition. And the denial to them of this Priviledge, which is annex'd to, and is a resultance from the Dignity of their Order, is a departure from Magna Charta, and not agreeable to the Provision of the 25 E.

But it was never an allowable Exception to a Judge, that the Judge hath not so good an Estate, or other Advantages of Fortune equal to the man he Judges, to sorfeit, in case the Judge be a Capital Offender; upon which reason, the Folio Gentleman grounds his Reasonings against the Bishops being Tryers of Peers. He argues the Bishops incompetent to try a temporal Baron upon this reason, Because the Bishop hath onely a

Peerage for his Life to forfeit.

But who can be satisfied with such fine and slender Reasoning, or entertain an Opinion that

is not better grounded?

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I would not be thought to argue or maintain, that Prelates are so fit to be appointed by the King's Commission to try a Temporal Peer, in the Court of a Lord High Steward, out of Parliament: when a select Number of Peers are to be appointed for Tryal, it is most convenient, that those of the same Species of the Baronage O 2 should

Thould be chosen for that purpose, for many read sons: but for a Tryal of a Temporal Peer in Parliament, which is the Establishment and Appointment of the Government; and not of the King's special Designation (notwithstanding the reason of the Folio) for Reasons herein alleadged. a Bishop is a most fit, legal, and competent Judge.

But I have taken too much notice already of the Errors and Mistakes of the Folio, and his false Reasonings; I am weary of such Animadversions: I shall proceed now to the end of my Discourse, without making any more Reslecti-

ons.

It is already cleared, that the Bishops are compleat Barons, that they are of the State of the Baronage; and it can have no Consideration how they came by it, nor how they held it: for the Modus tenendi doth not alter or diversifie the Honour.

And for my part, I cannot find reason to believe, but that the Bishops had, or might have had originally their Tryal by Peers; and that it was their Right, in Consequence of their being placed in that Order and State (besides that they have a Precedency to the Temporal Baronage) to be tryed by the Baronage, because the Law, for the reason afore-mentioned, appoints Tryals per Pares. But the contrary practice is the Strength of our Adversaries in opposing the Peerage of Bishops, which we shall therefore now consider of. WILLOW

It is certain, that in all Tryals wherein Bifhops are concerned, whether Plaintiffs, or Defendants, in Actions real, as well as personal, whether the Lands of the Church are concerned or not, a Knight is to be returned upon the Jury that is to try the Issue. I will not trouble the Reader with Law-Cases; any Gentleman that pleaseth, may examine the Truth of what I say.

This priviledge therefore cannot be in refpect of the Lands of the Bishoprick (as the Folio would have it) but of the persons of the Bishops, a respect to the Order and Peerage of the

Bishops.

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It is the same Priviledge, and as large as the Temporal Peers enjoy in this matter; (which is,) that the worthiest and best of the Commoners, which are Knights, should be impannelled upon a Jury, where either a Spiritual or Temporal Barron is concern'd: besides that I find a single Remembrance as high as 13 E. 3. in Brooks Tryal 142. (the Reports of that year are not printed) of the Bishops Right of Peerage in a Capital Cause: The Book is Evesque est Pere de Realme, & Serra try per Peres in Crime.

But how this Right came to be discontinued, and to lose remembrance, we shall presently account for: but I cannot think it Sence, which some of our Lawyers have said for this purpose, that a Bishop his being a Baron is Ratione Tenuræ, and not personal; which is all one as to

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fay, that the Bishop is a Baron, but his Person is not a Baron; but his Peerage and Baronage is no other in truth, than an Honour accumulated upon the Person of a Bishop together with his Office.

But to excuse them, they thought themselves obliged to give a reason why Bishops are not (as the Law is taken) to be tryed by Peers, but by a Common Jury; which grew into practice by accident, and was not ever so in probability; but certainly is very irregular, and extream incongruous; and therefore to give a good reason for it, is too hard a task to be undertaken. He that will undertake to give a reason of that which is unreasonable, and go about to prove a thing sit which is incongruous, must likely speak things equally incongruous, absurd and unreasonable.

But to speak what the truth is in this matter, the Bishops and the whole Order of Clergy did challenge to be exempt from the Jurisdiction of Secular Courts; but the Bishops, as is objected, never waved their jus Paritatis, upon Arraignment in Inseriour Courts. They onely never insisted upon it: For they had a better way to escape Justice, (viz.) by setting up the pretended Rights and Priviledges of their Order and that Church, for exempting themselves from the Jurisdiction of the Temporal Courts; and by this means, they did escape unpunished for the most part.

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Though there were feveral Abatements made by the Provision of the Laws, and the Wisdom of the Judges, to their unreasonable pretences therein; yet they always got off by their pretended Priviledge, if not with impunity, yet with some protection at least from Justice: and farther, they thought perhaps they might at least by this means avoid being thought guilty of the Crimes objected, whilst they used this pretence for a reason why they would not make a Defence.

And fure in all Offences but Treason they escaped with their Lives, before the Statutes that rook away the benefit of Clergy in some Cases of the greatest Guilt; and even in the Case of Treason, the Criminal ever had the Advocation and Intercession of the Church-power and Interest, because the priviledge they contended for, was so great and valuable a Concernment (as they esteem'd it) to the Order of the Clergy.

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But by this means, the memory of the Use of this Right and Priviledge was lost, and the Detestation of a Crime in a Prelate, provided him a speedy and ready justice, such as was at hand; and at length, Bishops themselves, unadvisedly, and being born down by the Common Opinion thus grounded and occasioned, did submit to Tryals by Juries.

It is enough to have given an account, how this Anomalous piece of Law came about. But Anomalous Cases never make Rules, nor destroy

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any. Nor is it to be drawn into consequence, whatever is a departure from the Establishment. to destroy it quite. Positive Constitutions, of which no Reasons can be given why they are so, can infer or argue nothing. Reason cannot make Law, though it is a fair inducement: but our Reason is most perversly imployed, when it proceeds from some Irregularities that happen in Humane Affairs, and are shuffled upon us by length of time, by violence and iniquity, and a heap of Accidents, to argue us into more, and to refix that which is regular, and remains firm. quo quis peccat, in eo punietur. Isit not enough, that the Order now fuffers a diminution of their dignity, by reason of the contumacy of the Popish Prelates their Predecessors; and that their Refufals to submit to Temporal Justice are visited upon the Succession? Severe enough this is in it felf.

But why should any man expect, that this Age in consequence of this, should be persuaded and reasoned to exclude the Bishops out of their remaining right? 'Tis no more to be expected, than that a man that hath one hand withered and mortified with the Palsie, should be persua-

ded to cut off the other for conformity.

We know how the Prelates fell from their primitive Dignity of being tried by those of their own Order, and were submitted to be tried by Juries of Commoners. It would be therefore consonant and agreeable to the Dignity of Barons.

rons, and Lords of Parliament, (for fuch the Bishops are) that they be restored to their ancient right in the matters of Trials, as mistaken Law is rectified by an Act of Parliament. A wise Act of State it would be, to redintegrate the Honour of the Baronage of England; the whole Baronage fuffering dishonour, by a mutilation of so Honourable a Priviledge in one of the membra dividentia of that body, whilst the Bishops are thrown to common Jurors. Especially fince the incongruity thereof hath given occasion to some men, to question another of the Jura Paritatis, which belongs to the Prelates, and to dispute their right of Session in that House, in one of the most important Concerns of the Government.

But however this Irregularity is discoursed, it doth not affect the Right of the Prelates now in dispute: for though Bishops are tried by Commoners out of Parliament, as the Law is now generally taken; yet that they are to be tried by Peers in Parliament, our Adversaries do not deny. And that they may and ought to sit in judgement upon Temporal Lords in Parliament in Capital Causes, we have clearly proved. So that the Reciprocal of a Bishops being judged and judging in Capital Causes in Parliament is intire, and in this they continue duly Pares.

But that it may not depend upon our Adverfaries Concessions, that Bishops may be tried by Peers in Parliament; for he is not always con-

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ftant to himself, and may take back what he hath yielded; we shall here subjoyn a short demonstrative proof, that the Bishops ought to be tried by Peers in Parliament: And that they have been declared and taken for Peers, and under that Character tried; when if they had not been reckoned and deemed Peers, they could not have received Tryal in Parliament. And it is

thus:

Edward the Third had prevailed with the Lords against their good-will to condemn the Earl of March, Sir Simon Beresford, John Matrevers, Boys de Boyons, John Devard, Thomas de Gowrney, William Ogle, for the Murder of Edward the Second his Father, and the Earl of Kent; all of them Commoners but the Earl of The Lords were afterwards fensible of the Injustice and Irregularity of their Proceedings, in judging and condemning Commoners; and for the avoiding of the like for time to come, an Act of Parliament was made, which followeth: viz. El est assensa & accord per nostre Seigniour le Roy, & touts les gents en plein Parlement, per tant que les dits Peres come Judges du Parlement pristerint en le presence nostre Seigniour le Roy, a faire & a render les dits judgments passant du Roy. sur ascun de ceux que n'estoient pas leur Peres & ce que encheson de murdre de Seignior Lige, & destruction de celuy que fu si pres de Sank Royal, E fits du Roy, que per les dits Peres, que ore sont ou les Peres que serront en temps aveniz ne soient, he

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nt, es mes tenus ne charge a rendre judgments sur auter que sur lour Peres ne a ce sair mes eiont les Peres de la terre poer eins de ceo pur tout Jours ore venu soient discharges & quietes, & qui les avant dits judgments ore rendus, ne soient ensample nen sequence en temps avenir per quoi les dits Peres puissent estre charges desore judger autres que lour Peres contre la ley de la terre si autiel case deveigne, que Dieu de send. Rot. Parl. 4 Et 3. 11.6.

This the Author of the grand Question concerning the Judicature of the House of Peers, would have but an Order of the House, and no Act of Parliament, because it served his purpose to have it so; but for no other reason which he offers in that Book : but that it was an Act of Parliament, will appear by a Record which my worthy Friend Mr. Petyt, a most Industrious and Sagacious Enquirer into the Records of Elder Times, hath furnished to me, which is a Writ directed to the Barons of the Exchequer, wherein the afore-recited Record is mentioned, and called an Act of Parliament, viz. Rex Thes & Baronibus suis de Scaccariis salutem; mittimus nobis sub pede sigilli nostri quædam Judica in Parliamento nostro apud Westm. nuper tent. per Comites, Barones, & alios Pares Regni, Super Rogero de Mortuo Mari, & quosdam alios reddita,necnon quondam Concordiam per nos & Pares prædict, necnon Communitatem Regni nostri in eodem Parl. fact super premissis, mandamus quod Judicia & Concordiam predict, in Scaccario nostro predict

coram

coram vobis legi & publicari, & ibid. seriatim, inrotulari, & de cætero ibid. observari fac'. Teste meipso apud Windsor, 15. die Februarii, Anno Regni nostri quinti, adhuc Brevia directa Baronibus de termino Sancti Hilar. Anno 5 E. 3. R. 33, penes

Rememor Domini Regis in Scaccario.

appears now an Act of Parliament to the purpose, that the Lords should not give Judgment upon others than their Peers; yet we find the Bishops afterwards judged in Parliament, and that in times near the making of this Act, when we may be allowed to presume they knew this Law, (and besides, the practice hath been conformable to the Law, since, as our Adversary confesses) and particularly, to mention no more, the Bishop of Norwich, in the 7 R. 2. and Thomas Arundel, Arch-bishop of Canterbury, 21 R. 2. both for Treason, were tryed in Parliament, by Peers; which Cases are before-mentioned to another purpose.

There was likewise an Act of Parliament, made 13 E. 3. n. 7. that the Nobles of the Land should not be put to answer, but in open Parliament, by their Peers; but two years after, that Act was repealed; otherwise we should not have since heard of Tryals of Bishops by common Juries in Capital Causes. And when the Laypeers can again procure and provide for themselves such a Law, they will not, I hope, envy the Bishops, if they find them therein included.

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CHAP. XXI.

DUt after all that hath been faid, it will be yet necessary to advertise the Reader, for informing and setling a true Judgment of the Right of the Cause, That in Questions of this Nature, we can onely arrive to a moral Certainty, which is made by incomparably the greatest probability. That we cannot be answered, but by producing something, at least, equally probable to all the several parts of our Discourse that are to the question. If by any Objection they should render any one part of our Discourse doubtful, they would do nothing, except they can do fo to all the rest; which can be done onely by offering something more probable. For when many probabilities are concurring to prove the same thing, they do not fingly stand upon their own Credit; but they are all affifted by their Conjunction, and give Aids mutually to support every one single probability. This is but necessary to be said, for that I see this Question will be kept up and defended, with Obstinacy, Passion, Interest, and unreasonable Contention.

And farther, that it is very undecent, that a question of this Greatness, concerning a matter grave and important, should be endlesly vexed

vexed with trifling Objections of the Nequam ingenioft. To prevent therefore the Caprice, Captious Cavillations, trifling Criticisms, forcing of a Grammatical Sence of Words against their true and easie meaning, (a meaning most agreeable to the fubject matter, and to the occasion of speaking of them,)and against their probable intendment, and contrary to the understanding of the Times when they were spoken. And that we may be no longer or more troubled with their Opposings to that which is fairly probable, an imagination of fomething barely possible, and which otherwise doth appear notoriously false. That Objections neither from the loofe Stile, especially of partial Historians, nor from Records of Matters dark and obscure, which leave us in doubt of their true meaning, and therefore can be no ground for Argument; nor from the various sence of words, which they make to stand for this or that, as it ferves their turn: At which rate nothing will be certain, because few words have one fingle determinate Sence, May any longer continue the Subterfuge of a desperate Cause, and matter of endless Dispute. I appeal to the World, whether fuch like Objections deserve an Answer, (for to some of these Topicks, whatever shall be produced by our Adversaries will be reduced:) And whether they are not rude and injurious to the Dignity of the Right in question, to draw it to a Tryal by such mean and incompetent ways, and unjust meafures,

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fures, as they are otherwise in the Management of this Question, to the persons of those that are concerned in it.

It is with passion to be resented, that so noble a Question should be tryed by such mean and incompetent ways of Probation, and by such unnatural measures, which can be endured by none but such, which have no measures of Right, but an agreeableness to their own Projects; and who are upon the search of Colours and Pretences, to change and alter our Government, or hurt it in a Vital part, and begin with the Bishops, to take down our Government.

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CHAP. XXII.

Have farther this just Caution to add, for the warding off some other undue prejudices in the Consideration of this question, that our Government did not continue the same after and before the Conquest; and that the Government upon the Conquest, hath received since many beneficial Alterations. That the Bishops Right must be considered in Analogy to those several Alterations; and in consequence, they ought not to be considered as Barons by Tenure, when Tenure ceased to be the reason of Baronage. The contrary whereof I find insisted upon, and made the reason why Bishops must

must not be tried by Peers. And the same reafon will serve to eject them out of the House at the Kings pleasure; because for sooth several Barons by Tenure have been omitted in Summons to Parliament, and no Lay Baron now (they say) is summoned upon that score, but for that he is a Baron by Writ or by Patent, which makes a permanent Nobility in their Families.

But that which is now our Government, in what it differs from what it was anciently, as it is not less rightfully our Government because it was not ever such, so it deserves our greatest zeal

to defend it, because it is much better.

Governments are (I am fure ours is) in the street of the first Ages, and to all the inconveniences that have been discharged and filed off insensibly by Experience and Wisdom, the daughters of Time, in a long series of Ages. We neither eat, drink, nor cloath our selves, nor build after the manner of our Ancestours, but according to our improved Inventions.

Unde datæ populis fruges & glande relictà? Cesserat inventis Dodonia quercus Aristis.

Claud. de raptu Proserpinæ.

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It is time ill spent by some of the Antiquaries, to go about to refix the present established Go-vernment, by endeavouring to find out the Records wherein it appears to have been other, of which we have some published, and are threatned with more. But they will have no other effect (I hope) than to provoke us to give God thanks for the wisdom of our Forefathers, that they have left us a Government much better than what they found, more just and peaceable, and better established for a lasting continuance: Though they perverfly design it as an Artisice to overturn the State, and to evacuate our most refined and wifest Constitutions. For that they can find fomething before them, they would note them to want Authority and Justice. We ought (fay they) to have recourse to the primitive Laws of the State, which have been abolished by unjust Customs and Usurpations. This is a Game at which we are fure to lofe all; nothing will be found just in this Balance. And by these means some base Factors for Slavery are contriving the ruine of our Liberty: but this they will effect when they shall have perswaded us to suffer again all the incommodities and coarsnesses of Life which our Ancestors suffered, because they were no better instructed:

Frugibus inventis ad glandes velle reverti.

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The great change that was made in the Baronage of *England* which we have observed, was remedial and healthful. Its Goodness doth

appear by the thorough Cure it made of our Disorders: for we have not since relaps'd into these Evils, from which we recovered by that Change. It was Legal, and with full confent of the whole Community : For it was introduced without Noise, without Opposition or Difpute; nay, without Observation: So that we hear not how it was done, but only perceive the Change. These are sure Signs, that we ar. rived by this Change, where our Government did at first design us; and that we were agree able in this Alteration, to its first Intentions That all Parties herein received their Satisfacti ons, and found their Interest; that no body was aggrieved at it, neither did it raise Wonder in any man; it was every man's Define and easie expectation. Which I believe are the true Reasons why this Change is not more re mark'd in our Histories. But pity it is, that through the injury of Time, and (what is refonably suspected) the iniquity of Corrupt Mi nisters, that we want our Records of that time, which could not have fail'd telling w the whole Secret, by what Means, the Inducements thereto, the Methods whereby, and the exact time when we made our Alterations in our Government, materially and in its esten tial parts always the fame.

Of this our Records, if they had been preferved to us intire, would have inform'd us; but alas, we have but a few Remains of them

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And of those that have arrived us, many are but References and Recitals in other Records, not the Original Records themselves; by which the Original Records escaped an utter Oblivion, against the Will of our Civil Expuragatories.

But of such that remain, the most laudable Use of them is, to give Authority to the present State of our Government; and we ought with good reason to interpret them in an agreeableness to the present Establishment, because the Change we suffer'd, was easie and natural: ex Hercule pedem, to invert the Proverb: For it is easier to know what Foot will sit Hercules, than to sit an Hercules to a Foot given.

CHAP. XXIII.

Hough our Government hath always confifted of the same constituent parts, yet they have been ill sized and proportioned, and unduely placed; not well joyned or united, or so blended, that neither could perform their Offices or proper Functions.

The Baronage of England was an over-grown part, and did by its Excess and extravagant bulk, disorder the whole Oeconomy of our Government, and became it self less useful. The Ho-

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nor of the Baronage was lessened to nothing by the Numbers thereof; they did not find themselves so much obliged to support the Majesty of the King, for the Preservation of their own Grandeur, as our great Barons are in our present Constitution. The People were in some fort represented by them, and they were a great Body of the Chiefest Free-holders; but they had a power to oppress them, as they were not obliged by so strong a Tye and plain Duty to a care of the People, because not chosen by them; and by that Choice, put under a more clear and strict Trust of taking care of their Rights. In this Constitution, neither King, Lords nor Commons had their Ends; and therefore would not have the old Constitution revived, if it were possible.

When the Representatives of the People, which make the House of Commons, were joyned with the Lords, and sate in one House, they could not discharge that Office of a Representative so well, as since they are divided from them, and make a distinct House. They could not well use that Freedom of Speech and Debate, under the Observation of the great Lords, upon whom the Principal Gentlemen had great Dependencies. Their Consent was often very improperly such; for he onely truly and naturally consents, who hath entire Freedom to dissent: Si vis scire an velim, effice ut possim nolle.

In the granting Aids for the Support of the Government, and defence of the Kingdom, a Matter of the greatest Importance, the Clergy, Nobility, and Commons, stood divided, and could not, as the Ancient Constitution was, by one Act of State be regularly and proportionably taxed according to the Exigency of the Assairs, and their respective Abilities; but those three Orders taxed themselves in such measures as they pleased, which made the Kingdome, Geryon-like, a Monster of three Bodies.

Their feveral Concessions, by this means, not likely to be always equal, and in the whole not

competent to the instant necessity.

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The Bishop, Abbots, and other Ecclesiastical persons of the Saxons time, held their Lands free from all Secular Services, besides the Trinoda Necessitas, viz. Expeditio, i. e. Supply for War , pontium & arcium extructio. But King Ethelbald did grant, that the Ecclesiasticks should be freed from all publick Charges, except for the Building and Repairing of Castles and Bridges, Ingulphus, pag 853. The like Immunity was allowed to the Clergy of the Empire, by Honorius and Theodosius, Lib. 4. Cod. Just. de priv. Dom. Aug. By the Great Charter their Priviledges were confirmed. And for this reafon the Clergy have taken themselves not of Right chargeable to Aids granted to the King by Parliament. This Exemption hath been en-R 3 vied

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vied to them, and made matter of Reproach, though unduely, in after-Ages. But notwithstanding this Exemption, they have aided the Crown with Supplies frequently; yet in such manner as afferted, and faved their ancient Priviledge of being exempt; that is, they would not fuffer themselves to be involved in a general Law; but of their own Freedom and Will, gave to the King: which Concessions were notwithstanding not legal, unless confirmed by Parliament, to whom belonged always the power of judging of the Freedom and Ends of giving Aids and Benevolences, and the necessity that required them. But in the last Ages, they have, for their Commendation and Honour, waved their pretences of Priviledge and Exemption; and for the fake of Common Justice, and the Publick Weal, for avoiding being thought less in their Duty to the Publick than their Order required, and for the better ascertaining, and more equally adjusting the Parliamentary Aids, they have submitted to be taxed by Acts of Parliament.

The Commons in Parliament we find, as late as Henry 7. taxing only the Commons, and that by Indenture between them and the King, (This Form of Grant, is utterly exclusive of the Lords Power to change the quantum, times of Payment, or ways of Levying of the Aids granted) wherein they subject all Lands to the Levies thereof, but the Lands of the Lords in Parlia-

Parliament, or Land amortis'd to the Church.
Such an Indenture was made in Parliament held
at Westminster, 10 H. 7. and is pleaded at large in
Rastals Entr. fol. 135. But of late our Government hath cleared it self from that grand incon-

veniency.

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The Commons in Parliament, and those whom they represent, being far the greatest Proprietors, they reasonably challenge it their Right to propound all Aids, and appointing the Levies, and Methods of raising them; which (because it must be agreed that the Commons in no congruity can tax the Lords authoritatively, or impose upon them) must have civilem intellectum; that is, the Commons in a Bill of Aids do propound, that they will agree on the behalf of the Commonalty, that they shall be taxed as the Bill propounds, if the Lords for their part will agree the same.

CHAP. XXIV.

DEIther was our ancient Government without great faults and inconveniences in the
conduct of Religion, the principal care of all
Governments. On the one fide, by confounding
Administrations which should have been kept
distinct, which was the fault of our Government in the Saxons time; and by utterly difR 4 joyning

joyning and severing the Church and State, and not tying the Ecclesiasticks to a just dependency upon the State, which was the Evil of aftertimes; that is to say, the Ecclesiasticks were lest to themselves to convene Councils, and to make Canons, without any dependence upon, or relation to Parliament.

The Constitution was such in the Saxons time. that the Synods or Councils which govern'd in Religious matters, were the same with their great Council or Parliament. By this means all the Rules and Orders that were made in the matters of Religion were not Canons, which are of the nature of Councils, but Laws, and obliged those that contravened them to temporal punish-The Church was thereby turned into a Dynasty, and Religion was against its nature promoted by force, which can onely truly obtain by perswasion. And wheresoever this is in practice and use, the Clergy, to the great scandal of their Office, will be entituled to all the Severities that shall be inflicted upon Dissenters. Heretofore the Councils of the Church, and the Authority of the State, were unduly confounded.

After that, we had Legatine Councils, and Provincials convened by the Archbishops as they pleased, not under the observation and control of the Civil Power; by which many inconveniencies were occasioned, many embroilments of the people happened, the Authority of the Prince lessened, and Civil Rightsen-

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croached upon; the validity of several good Laws made in Parliament disputed, clamoured against, and sentenced as unlawful. For want of a due subservience and dependence of the Ecdefiastical Conventions on Parliaments, we had Imperium in Imperio, or at least a Kingdom divided against it ielf. This fault in our Government was help'd by Edward the Third, our English Justinian; he in the several Writs of Summons of the Bishops to Parliament, made it a fetled Rule, that the clause of Præmunientes should be inserted, requiring them therein to warn respectively, Priorum & Capitulum Ecclesiæ vestræ C. ac Archidiaconos, totúmque Clerum vestræ Diocesis, quod iidem Prior (which if a Cathedral is the same as a Dean) & Archidiaconi, totúsque Clerus vestræ Diocesis, quòd iidem Prior & Archidiaconi in propriis personis suis, & dictum Capitulum per unum, idémque Clerus per duos Procuratores idoneos, plenam ac sufficientem potestatem ab ipsis Capitulo & Clero habentes, prædictis die & loco personaliter intersint, ad consentiendum his quæ tunc ibidem de communi concilto ipfius Regni nostri, Divinà favente Clementià contigerint, ordinari. And accordingly the several Bishops, in obedience to fuch like Writs of Summons to Parliament to them directed, summoned or warned their Deans or Priors, Archdeacons, and the Clergy by their Proxies; which have fince made the Convocations, or the Ecclesiastical Councils of the Kingdom, and are to meet at every Session of Parliament,

ment, but to debate nothing but what is propounded, and to publish nothing for Canons without the Royal Assent. So that they are to act nothing but under the observation of Parliament. This Convocation, or Ecclesiastical Council (other allowable Synods we have none) ought not to convene but when a Parliament is sitting, and continue no longer than the Parliament.

We ought to observe herein, and applaud the excellent wisdom of our Government, that in the very constitution of it hath provided for the peace of our Church, by filencing Controversies which can never be determined with any effect; such a wife expedient and course, as the best instructed Christian Emperours did take, by their Edicts prohibiting publick Disputations about subtil and nice Questions; as Constantine, Martianus, Leo & Anthemius, Andronicus, Heraclius, to mention no more. None but mad men and extravagantly prefumptuous, or utterly ignorant of Church-History, will ever here after go about by Acts of Councils to end Controversies, but rather to shame the Dogmatizers out of their contentious zeal, by shewing how little the ends and designs of Christianity are concerned one way or other in such Questions, in which those that are most learned know least; a little learned ignorance would discharge most of them from any longer troubling the world.

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And farther, we must observe, to the Honour of our Nation, that it is so religiously wise, as to commit the Care of conducting Devotions, ordering the decency of Publick Worship, and censuring the Manners of Clerks, to the Bishops, and the Principal Clergy; whereto their Religion, Wisdom, Devotion and Moderation, bespeak them the fittest Persons.

No less remarkable is the Wisdom of our Government, that it doth not make that which is properly the matter of Canons, the Subject of their Legislation, and thereby subject us to Temporal Punishments, where the Admonitions of the Church, and her Censures, are more proportioned Remedies to the disobedient and froward. Laws oblige us to punishments, govern us by Fear and Awe, oblige with Reason or without Reason, because they are Laws. admit of no Ecclesiastical Relaxation or Dispenfation, and bind when the reason ceaseth. whatfoever thing relative to Religion a Law is made, the matter is taken out of the Hands of the Church-men, and no longer under their Government; whose Government is a Ministry, not Empire and Dominion. They can institute nothing but what they may reasonably perswade. Nihil tam voluntarium quam Religio. Lact. can have no more Religion or Truth, than we can perswade. Religion and Truth are to be promoted by moving the Will. The Church rules by perswasion, and her Canons oblige only

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ly for their Reason, Religion for the sake of our own Edification, and the Edification of others, the Peace of the Church, and Reverence of our Pastors and Teachers. Canons in their own Nature are Temporary, for the present necessity and convenience; variable and mutable, as the Edification of the Church shall require, and the prudence of the Guides of the Church shall determine; and therefore what is properly the Matter of Canons, ought not to pass under Laws which are rigid and inflexible, peremptory, punitive and ungovernable. And this magnifies the prudence and Christian Temper of our English Prelates.

CHAP. XXV.

Aftly, I observe what a dangerous Opinion, our Judges sometimes had in reference to the Baronage of England, viz. That it was in the Power of the King, or in any Nobleman, once summoned by Writ to Parliament, as a Baron, at the pleasure of the King to relinquish his place, and determine the Nobility of his Family. Which Opinion had it not been corrected, would have made that State ambulatory and moveable, upon which the whole Frame of the Government depends. The Baronage of England is the Stabiliment of our Government, and may

may be soon made too weak to support the other greater parts of the Building that rest upon it, and are supported by it. It is this that moderates between the two contending Interests of Prerogative and Liberty, and prevents those violent Concussions which would otherwise unavoidably happen.

----geminum gracilis Mare separat Isthmus, Nec patitur conferre fretum si terra recedat,

Ionium Ægæo frangat Mare .---

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Of what Importance therefore is it, that we should be a Kingdom that cannot be shaken, as much as Humane Wisdom can provide, and frail Materials will admit; That our Baronage should not hold their places precariously at the King's Pleasure, and be Deposed at his Will? And yet our Judges, after that Honour was fixed in the Families of those whom the King should appoint by Writ to hold that Honour and Place in the Common-wealth, remembring that Baronage was at first a service imposed ratione tenuræ, by William the Conqueror: Our Judges, I say, more able to judge of Private Rights, than in Questions of State and Government, being under a prejudice, from the Consideration of the Original of our Baronies, did allow the Plea of Thomas de Furnival, who had been called to several Parliaments by Writ, That he was no Baron, for that he held not his Land per Baroniam, vel partem Baroniæ; and therefore adjudged him no Baron. Communia de Term. Sancti

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Sancti Hillarii, Anno 19 E. 2. Rot. penes Remem, Dom. Thes. in Scaccario pro Thoma de Furnival, Seniore exonerando. But of this Cause they were not properly Judges; the Lords themselves are the only Judges of the right Constitution of that House; and they have anciently challenged a Writ of Summons de jure & debito Justitia sor themselves and Descendents; where they have been once summoned by Writ, and answered that Writ, and taken their place accordingly. And the whole House doth constantly retuse to act, until the Lord that complains of an Omission, hath a Writ of Summons sent him.

What Apprehensions was had of this Honour, by Thomas de Furnival, and others in his time, I know not. But it might have been then, and since it is well understood, that that place which they sustain in the Government, is of the highest Trust; and the Benefits which redound therefrom to the Commonweal, the greatest: For they make the Government as well gentle and

good, as firm and stable.

These Noble Lords Marchers are placed between two great contending Powers, to preserve their due Boundaries and respective Limits, and oblige them to Right and Reason, by their Courage and Wisdom: And for their Encouragement and Reward, deserve the highest Honours; and that they should be as they are, immortal in their Families. And accordingly it was resolved lately in the Case of the Honour of Purbeck,

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beck, in the Lords House, that no Fine or Surrender to the King of the Honour of a Baron, can extinguish it, but that notwithstanding it shall continue to his Heirs & Descendents: And that upon the clearest and most important Reason; for that the Constitution of the Government ought not (as in its own Nature it cannot) to depend upon the Will of the Prince, nor of Single Persons that bore a part in the Government for their time, nor be prejudiced in Succession by their Lachesse.

The same Priviledge doth belong to the Spiritual Baronage, the successive Nobility of this Realm; and a Writ of Summons to Parliament can be no more resused any of them, or any of their Successors, than it can to any of the Temporal Baronage.

I cannot but upon a review of our Government, applaud our happiness, in that we enjoy, and were born to so excellent a Government, without our Sweat and Contrivance; which was arrived to by several flow Steps, and beaten out

by the long experience of former Ages.

But it is a portentous thing, and of ill, very ill Omen, that a Government so Venerable and August, so Wise, Beneficial and desirable, should be assaulted with peevish Dotages, froward Petulances, and childish Cavillations: And that some Brain-sick soolish Antiquaries, Rakers in the Rubbish of Time, should imagine, that they can barter away our Government

ment for mouldy Bread and clouted Shoes: But these we have before obviated. Another fort we have before engaged to consider in their ill Treatment of the Bishops in their handling this Question of their Right we now defend. To which I shall now proceed.

CHAP. XXVI.

Prejudices that lie against the Right of the question, from those Calumnies that are thrown upon the Order: And that no reason, not the clearest Demonstration will be admitted to any Degree of satisfaction, until these be removed. Men's understandings are mingled with their interests and Passions. It is a hard matter not to see the person in the Cause; and if the person is disesteemed, his Right cannot be equally savour'd: Nay, which is more, if our Adversaries can perswade the World that the Bishops will abuse this their Right, nothing will be able to keep off this Conclusion, That they have none.

We most duly therefore here complain of the dishonest Artifice used by the Gentlemen we have undertaken in this Cause, viz. That they seek all occasions of lessening the esteem of the Bishops; and of them, they speak what they will. He that can believe what he will, is

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is an Infidel; and he that does what he will, is a man of no Conscience; and he that can speak what he will, wants Truth and Candour: But of a culpable fort of Wilfulness we find these two

Authors very blameable.

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We must complain of these sierce Disputants, that they strive unlawfully; they contend with Passion, and a keen Animosity; they strike as well as argue; they lay about them right or wrong, to assault and wound the persons whose Right they oppose: A wound and dishonour do they give to their own hurt.

Animosque in Vulnere ponunt.

The first and greatest Injustice they do to the Cause against all Right and Reason, of which sure they must be self-condemned, is an odious remembrance of any thing culpable in the whole Succession of Bishops in the times of the lowest degeneracy of the Christian Religion, and of the heighth of Papal Usurpation and Tyranny; which was more heavy in those times upon the Rights of the Bishops, than upon those of the Crown.

When Princes through their own Weakness, or to serve their Interest, or to support their desective Titles to their Crowns, or for obtaining Dispensations from his Holiness for an unwarrantable Marriage, or for other ends and reasons, could not, or would not defend the Bishops and their Rights.

The very Order of Bishops in those times was attem-

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attempted upon, to be annulled by that Occume. nical Usurper. It was disputed, and boldly maintained in the Council of Trent, that the Bishops were only jure Pontificio, and had no authority in the Church, but fuch as his Holiness would vouchfafe them. It was endeavoured to make them but his Substitutes: He pretended Powers to Create and Translate them, diminish or enlarge their Dioceses; gave them more or less Authority; did suspend them also, and deprive them; and pretended, that they had onely a vicarious and precarious Authority from him: and in fuch measures as he should think fit to limit and appoint. Were not Provisions and Refervations first made by the Pope, upon Be nefices belonging to Church-men? The Statute of the 25 E. 3. gave their Presentations to the King, when the Pope usurped upon them, as a Fortification against his Usurpation and Inval-Did he not urge his Canon upon them that they should not agitare judicium sanguinus, fo much talked of in this Question, that he might strip them out of their Secular Greatness, that he might the better go over them, and tread upon them and their Ecclefiastical Rights?

Is there no Confideration to be had by thole Gentlemen in this Case, of the Error Temporis, or Vitia Temporum? They will fnatch at this unduely when it feems for their turn; but can they think that any Bishop, under a Protestant Sovereignty, will ever return under the old And

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And yet the business of Provisions, Reservations, and Dispensations, and of Pluralities, must be laid at the Bishops Door (yea, though Dispensation of Pluralities is now established by Statute-Law) with all the Usurpations exercised by the Pope, the First-born of the Children of Pride, to which they willingly-unwillingly were forced to submit.

But how unrighteous a thing is it to load the Order it self with all the Miscarriages of a long course of Succession? as if the faults of the Bishops in all Ages, did stick to their respective Chairs, and had passed into the Office it self.

But it is no wonder, that they remember the Faults of those Bishops unduely to the Disparagement and Dishonour of the Order and Succession, when the Folio turns matter of Commendation into Reproach, and calls their contending for due Administration of Justice and Laws, Clamours for the breach of Magna Charta.

Invisos seu bene, seu male facta premunt.

By this he seems to argue them guilty of affecting Temporal power, and intermedling unduely in Secular Affairs.

S_2 CHAP.

C H A P. XXVII.

BUT to discharge this Imputation, we will shortly remember how modest they have always been in the exercise of their Ecclesiastical Office; and how faithful they have always been in former ages, to that Temporal Trust which the Laws and Constitutions of this Government hath annexed to the spiritual Office of a Bishop.

The Bishops challenge nothing to belong to them of Divine Right, but the Exercise of their

Ministry in the cure of Souls.

They do not assume the Ossice of themselves, but are appointed thereto by the Soveraign Power; and therefore the Bench of Bishops are not answerable for every one of their Order. They rightfully acknowledge the right of Investiture, and collation of Bishopricks, to be in the King, subject to Royal Exemptions and Priviledges from their ordinary Right. From which Exemptions Mr. Selden is too forward to conclude his Doctrine of Erastianism, for that the Exercise of their Function may be restrained, as well in reference to Persons as Territories, by the Civil Authority.

Their Convocations are convened by the King's Writ; they debate nothing without his

Leave.

Leave. Their Results become Canons, and receive Sanction by the Royal Authority, and do not pretend to infringe any Temporal or Civil Right or Law. And besides, their Convocations are always to be held fitting Parliaments, and no longer, not at any other times: And whatever they debate or resolve, is under the observation of Parliament. Neguid detrimenti

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The Bishops make no Laws about Religion apart by themselves, neither have they any Negative against any that are propounded; and therefore are not answerable for any that are made or not made. They have not the definition of Herefie, but the Law hath declared it fince And the Writ De Hæretico the Reformation. Comburendo is fince abrogated by the Christian temper of a Parliament principally confifting of fuch Members that were conformable to the Institutions of the Church of England; that is, the legal Establishments of this our Christian Commonwealth.

The Church of England is no more her own present Establishments, than the present thoughts of any man is the man himself. As the thoughts of a man are more refined and unreproveable as the man grows wifer, so do the Laws and Constitutions, the Orders and Rules of a Church or Christian Republick, alter, amend, and improve, as the Wisdom and Virtue, Religion and Devotion of the Government, and the principal parts thereof

thereof in Church or State increaseth or advanceth.

Our Bishops have had, and that with the greatest reason, greater apprehensions of Schism and Separation, than of errours in Opinion which occasioned it, as of worse importance to the Christian Faith than the errours themselves. Besides that a man cannot help being mistaken in many things, but it is in every mans power to be modest and peaceable, and wise to sobriety, and hold the unity of the faith in the bond of peace and charity; and not to revile and deprave that which hath the publick approbation, though he cannot thereto fully assent. It is great iniquity and unrighteousness in any man, to pretend to Liberty of Conscience as his right, and in the mean time not to tolerate the publick appointments, and what is authoritatively allowed and approved.

If Controvertible Opinions are allowed a Warrant for making a Sect and separate Communion, and Churches are denominated and distinguished by them, and consequently such Opinions are advanced unduely unto the same necessity of belief as Articles of Faith: What will become of the Christian Verity? where will it be recognized and purely professed? how distinguished? how understood? how ascertained amidst the the number of Opinions contended for, by the feveral dogmatizing Sectaries, with more zeal than the undoubted and uncontrover-

tible Articles of Faith?

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Nay, I will adventure to say further on their behalf, that Schismatical Separations would not offend them, (so little do they affect to be Magisterial) but for that, if this Disease should grow epidemical, there would be no such thing as a Christian Church, and the Christian Religion would perish from the Earth without a miracle.

It is onely designed by our Church, that those whose Subscriptions are required, should thereby onely signific their allowance of the Liturgie and Articles, as sit to be used and allowable. What Plea then can our Separatists have for a Toleration for themselves, who by their Separation seem unwilling to tolerate the publick Establishment, either from our Governours Civil or Ecclesiastical, or from one another in their di-

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To reform or change to these mens pleasures, is impossible; for that they cannot (they positively differing from each other) be all pleased in any one possible Establishment. Besides that, until we cease to be Schismaticks, and to be of separate and divided Communions upon the score of any dislike, or but probable exception to what is publickly received or allowed; the altering any thing for our satisfaction, will be but applying the Cure to the Symptomes, a cutting off one head of the Hydra. By this way toessee an union, is as impossible, as it would be toempty the Ocean, without stopping the current of the Rivers.

The Bishops are (as all men, by how much they are better learned, are) of the greatest moderation in Opinions, and can tell how duely to rate and value (according to the Prejudice or Advantage they do to the ends of our Religion) those several Opinions that have been contended with surious and rending Zeal, in the several Ages of the Church, to the Scandal of that

peaceable Institution.

They can have a better opinion of that man who hath unhappily entertained the less probable fide of the Questions controverted, if he opines with modelty, than they have of him that holds the most probable part thereof with a Sectary-zeal, Separation from, Contempt and Disdain of those of a different perswasion. Their Moderation is known unto all men; of it their Opposers have had very sensible experience: the several Dissenters cannot dissown, but must confess, that they have had severally kinder usage from the Episcopal men, than their several parties have from one another.

By their Learning, Wisdom, and Moderation, which is most eminently known and observed in many of them, and hath recommended them to the highest esteem, they must be allowed (their Enemies being Judges) to be the fittest Arbiters of the Controversies, and the most likely and probable procurers of the Peace of Christian desired to the procurers of the Peace of Christian desired to the procurers of the Peace of Christian desired to the procurers of the Peace of Christian desired to the procurers of the Peace of Christian desired to the procurers of the Peace of Christian desired to the procurers of the Peace of Christian desired to the peace of Ch

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All the dissenting parties have reason to look upon them as their common Sanctuary and De-

fence against the outrages of each other.

But in this they must be pardoned, if they, being under a Law or Rule of their Superiours (made, as they think, in a matter lawful) act accordingly, and do not disobey for their sake who think otherwise, though in the mean time

they pity their scruples.

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Indeed the Terms of the Nonconforming Ministers have been made hard upon them; but that hath been from reasons of State, which the late unhappy Wars occasioned; and they were ejected out of their Livings by Statute-law. And on the other fide it is true, that many men, not fo fit for that holy Function, have enjoyed Church-benefices; but neither this can the Bishops help: For they cannot reject a Clerk prefented to a Benefice, or eject him, but as the Law will, (so facred is the right of Patronage, and so fixed by the Law are Ministers in their Livings) which is not nice in the manners of Clerks; and the Bishops cannot be severer than the Laws.

So that if some men not of the most unblamable conversations have kept their Livings, and fome of very unexceptionable Lives have been ejected, the unhappy Nonconformists are directed where to make their complaint.

But as there is little cause of complaint on this part of the Episcopal Authority and Function, viz. their Superintendency over the Pa. stors of their Diocesses: So we shall observe how er they have behaved themselves in the exercise of M the power of the Keys: For what is done there in by their Chancellors and Officials, to whom Custom hath given some Powers and Authorit ty which cannot be check'd and control'd by the Bishops themselves, they are not to ac Neither are they answerable for the Lay. Zeal that hath made the condition of Excommunicates fo very afflictive. For whatever form men please to think, the Laity have out-done the Ecclefiasticks in the Excesses of intemperate Zeal, as they are most apt and prone by their Ignorance to Superstition. No man can pass under the Admonitions of the Church, and be suspended from the Holy Mysteries until he hath made fatisfaction for his diforderly walking, or spiritual Pride in breaking Order, but he's presently given up by the Laity to Satan. I mean, he suffers beyond the first intention of the Church in her Discipline Severities enacted by the Laws of the State, which if reverfed by that Authority that established them, and a civil Process were enacted for the Ecclefiaffical Courts in Causes of a Temporal Nature, which are appointed by Law to their cognizance; I perswade my self, we should hear of no more complaints against them in the Exercise of the Power of the Keys.

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Pa. For we observe, that they exercise the Powhow er of the Keys with deference to the Secular fe of Magistrates: They never presume to excom-here municate the Prince, lest they should therehom by lessen his Authority, and shock the Government; for that all Government is established by the Honour and Reverence of the Governour, according to that faying of Aristotle, έκ τε καταφουνείως πόλλας τη καταλυσέων, Dissolution of Government doth eafily follow the Contempt of the Governour. As Kings are not subject to Penal Laws, nor to be coerced by Penalties: So true it is also, what Balsamo hath noted, ad 12 Canonem Synod. Ancryanæ, Imperatorià unctione

penitentiam tolli.

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Neither do they presume, in Reverence to the King, to excommunicate his Counsellors, and Ministers of State and Justice: For so it was declared amongst other of the Avitæ consuetudines of this Realm, by the Affize of Clarendon, Nullus qui de Rege teneat in Capite, nec aliquis dominicorum ministrorum ejus excommunicetur, nisi prius Dominus Rex conveniatur; in which our Bishops are agreeable to the Ancients. Hildebert Cenoman. after Bishop of Tours, who lived about the eleventh Century, fays, Apud Serenifsimum Regem opus est exhortatione potius quam increpatione, Concilio quam præceptis, doctrina quam virgà. Ivo, Bishop of Chartres, in his Apologie for communicating. ---- Gervasius saith thus, Quos culpatorum Regia Potestas, aut in gratiam benignitatis

benignitatis receperit, aut mensæ suæ participes fect they rit, eos etiam Sacerdotum & populorum conventu Chri suscipere in Ecclesiastica Communione debebit; u bind quod principalis pietas recipit, nec à Sacerdotibu any Dei alienum habeatur.

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Thus while the Bishops are not guilty of but mean and unfaithful flatteries, they do not participate of the pride of the Bishops of Rome, or the irreverence and fawciness of a Presbyterian Confistory, against their Princes and Gover. nours.

Neither do they call up any criminal cause originally to their examination, but pronounce the fentence of Excommunication on such one. ly as first are civilly convict of a crime; save that matters of Incontinency are by the Common Law submitted to their Censure; for that by the venerable gravity of the Judge, and by the more private examination of fuch offences, the mode sty of the Nation is best preserved; which is a surer defensative against the rifeness of such Crimes, perhaps than the sharpest punishments.

If they do excommunicate any man without a just cause, or do not absolve the Excommunicate when he hath made his fatisfactions, the Bishop is compellable by the Authority of the Kings Courts to affoil the man, under the pain of having his Temporalities seized into the Kings hands, though he is not restored without the Episcopal Absolution. For it is fit they should finally judge in their own proper Province; and they, they must not, they cannot relax the Laws of Christ, nor administer the power of the Keys of binding and loosing, by any other measures, for any power on earth. But against this power of the Kings Courts they do not dispute or declaim, but have recognized it by their submission; and they can submit to the penalties, without complaining of this civil Constitution: Nay, in the general order they approve it, though in a particular case perhaps they do not, because they can-

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Our Bishops do not encroach any Temporal Authority in ordine ad spiritualia, that stale pretence by which the Bishop of Rome hath arrived to his exorbitant power, and by which the Scotch Presbyters would have acquired the like over Kings and Governours. Their Authority always administers to, and assists, but never thwarts or contradicts the Temporal. They have accommodated their power of the Keys to the vindication of our established Government, against the attempts of Arbitrary Power; to which their Allegiance to the King, and the regard of the Publick Peace, did oblige them: For fuch attempts are mostly the ruine of those that make them; always bring the Government it self into the greatest danger, and sometimes prove the ruine both of the Government and the Nation.

This was required of them as an indispensible duty, they being a principal part of the Government;

benignitatis receperit, aut mensæ suæ participes fect they rit, eos etiam Sacerdotum & populorum conventu Chr suscipere in Ecclesiastica Communione debebit; u bind quod principalis pietas recipit, nec à Sacerdotibu any Dei alienum habeatur.

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vernment; and the present Bishops, Successions to all their Rights, have no reason to decline their

example, if they have the like cause.

The Bishops anciently were sturdy opposer of King John, when he designed to put this King dom into Vassallage to the Pope; and thereupon he writes to the Pope thus as followeth: In conspecturates vestrae humiliamus ad gratias multiplices, prout meliùs scimus & possumus, exhiben das, pro cura & sollicitudine, quam ad defensionen nostram & Regni nostri Angliae, paterna vestra be nevolentia indesinenter apponit, licèt duritia Pralatorum Angliae & inobedientia impediant vestrae provisionis effectum. Pat. 17 Joannis R. M. 15. ass find it related by Mr. Petit, in his Book entituled, The ancient Right of the Commons of England asserted.

About the 24 H. 3. Edmund then Archbishop of Canterbury, at a Synod held at Westminster, the King being present, Candelis acceptis, & prejectis, ac extinctis, Chartam Libertatum violantes, wel sinistre interpretantes, excommunicantur. Mat. Paris, p. 151. About 13 years after, viz. in 37 H. 3. Boniface then Archbishop of Canterbury, the Sentence of Excommunication is again repeated against those, Qui Ecclesiasticas Libertates vel antiquas Regni Consuetudines in Chartis communium Libertatum & de Foresta concessas quascumque, arte vel ingenio violaverunt. Fleta l. 2. c. 42. Dors. Claus. 37 H. 3. membr. 9. Additament. ad Mat. Paris, p. 117. Which Sentence of Excommunication

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munication was ratified and confirmed in a Parliament held that year, as followeth: Noverint universi quod Dominus Rex Angliæ, illustris Comes Norfolk & Mareschallus Angliæ, H. Comes Hereford & Esex, J. Comes de Warewico, Petrus à Sabaudia, ceterique magnates Angliæ, concesserunt in sententiam Excommunicationis generaliter latam apud Westm. decimo tertio die Maii, Anno Regni Regis prædicti 37, in hac forma, viz. Quod vinculo præfatæ sententiæ ligentur omnes venientes contra Libertates contentas in Chartis communium Libertatum Angliæ, & de Foresta, & omnes qui Libertates Ecclesiæ Angliæ, temporibus Domini Regis & prædecessorum suorum Regni Angliæ obtentas & usitatas, scienter & malitiose violaverint, aut infringere præsumpserint. And the Record concludes, In hujus rei memoriam, & in posterum veritatis testimonium, tam Dominus Rex quam prædicti Comites, ad instantiam aliorum & populi præsentium, (which at that time was the flyle of a Parliament, and the manner of passing such Acts) scripto sigilla sua apposuerunt. Rot. Pat. 37 H.3. M. 12. dorfo.

And whereas it was provided by the Confirmat. Chart. c. 4. 25 E. 1. and by the Statute De Tallagio non concedendo, c. 4. 34 E. 1. That Excommunication should twice a year be denounced against the Infringers of Magna Charta: At a Synod held for the Province of Canterbury in that Kings time, John Peckam Archbishop of Canterbury, the like Denunciations were injoyned to be

be made four times every year, Constit. Province tit. De Sententia Excom. And in the Province of Tork it obtained three times in a year, Manuals

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juxta usum Ecclesiæ Eboracensis.

By which the exemplary zeal of the Bishops in those times against Oppression, and the violation of the common Rights, and the attempts of absolute and unlimited power appears; for that they prevented the Temporal Baronage, and outdid the Parliament it self in defending and guar.

ding the Government of Laws.

By the way we cannot but take notice of Mr. Selden his mistake in his Book De Synedriis, which he fell into by inferving to his beloved Erastian Hypothesis, viz. That that Excommunication before mentioned in 37 H.3. was enacted by Parliament; whereas it was onely confirmed, but pronounced by the Bishops, though with the seeming good liking of that King; fo that the power of the Keys was not usurped, but the exercise there of approved by Parliament; according to what hath been usual, as Grotius observes, Usum Clavium Divino Juri congruem, & pænarum injunctionem Canonibus & Legibus consentaneum, summæ potestates solent approbare; atq; hoc est Imperiale Anathe ma, Quod non una Justiniani lege comprehensum est. Which, together with what hath been faid by us in this Chapter, will serve for an Answer to what Mr. Selden hath aggested in his Book De Synedriis, for wresting the Keys out of the hands of the Bishops, and for the annulling all Ecclesiastical Authority. They

They pretend to a Jus Divinum only for that which merely concerns their Spiritual Office; and I cannot for my part suspect them of holding any Opinion of a Jus divinum in Civil Offices, which are of a Humane Original, because I can imagine no reason for such an Opinion; though I know it is by some imputed to them.

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By a Thomas of Becket, a Sibthorp and Manwaring, and a few less-confidering Clergy-men in an Age, we are not to conclude the Judg-ment of the Body of our Learned Clergy. They affuredly know, as all men in their Wits do believe, that the Government is de jure humano such as it is, and can be no other, nor rightfully admit any Alteration. That God never made any Commonwealth but one, by his directive Will, and that only for one Nation (for in these things, he hath left men ordinarily in the Hands of their own Councils, and to their own Prudence) in which he had no regard to the absolute rightful Sovereignty of Adam's right Heir, the wildest certainly of all the Paradoxes that this giddy phantastick Age hath produced. The Kentish Knight should have kept his Dream to himself, until he had found him out, and then have brought him and his Book called Patriarcha together to the King: Then I doubt not but his Majesty would have provided him his due Reward. But his Book, and the Publishers thereof, deserve his Majesty's utmo t

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Government is about to be changed when Books are licensed to prove any thing Lawful in that kind. And besides, it makes a Charge upon our Divines, that they have a good liking to the Design, for that they who best understand by their Profession the Jura Divina, have not answered it. But to speak the Truth, the Book is not to be answered: For it is but a fine Essay, how near Non-sence may be made to look like Sence; and it is truly worth no

man's Undertaking.

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But whatfoever finister, thoughts some ill-as fected Men to the Bishops may conceive of them, we expect, and with reason too, that they will, with equal Courage to that recorded of their Predecessors, stand up for the Preservati on of the Government, in its true and rightful Constitution. And the rather, for that the true Religion, their Principal Care, and their Temporal Rights and Dignities, will inevitably po rish in the Change: Nay, perhaps in consequence of the very Attempt of a Change, except they strenuously for their parts oppose it. However, their Order will certainly, by their Silence and Indifferency, be rendred despicable. They will lose all opinion with the People of their Sincerty, perform their Functions with no advantage and lose that share in the Honours and Affections of the People that will establish them, and bespeak them useful and necessary to the Church and State, State in their several Capacities, in all after-times. That they answer their Trust, and perform that Duty which they owe to the Publick in their several Offices, is that we may justly expect and this they will certainly do, though they should be censured, as they were in K. John's days; or in the Language of the Folio Author, charged to be clamorous and over-busic Medlers in Matters of State and Government. But to return;

Is it not a coarse Artisice, in the Octavo, pag. 96. that he will so wilfully mistake the Question of the Bishops being one of the three States, and represent the Matter as if the Bishops should have a Negative by themselves, to stop the passing of any Bill, if they are admitted to be a distinct State?

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CHAP. XXVIIL

Question, whether they are divided in their Voting from the Temporal Barons, most certainly they never were; nor was it ever disputed. Though an obstinate Opinion was maintained from the time of E. 2. in the Case of the Spencers, until the time of E. 5. in the Case of the Rarl of Salubary, That the Bishops Presence was necessary in Judgments, even in Capital

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pital Causes, which must be allowed a clear Ar gument for their Right of Judgment in fuel Causes. For the Spiritual and Temporal Lords though two States, make but one House, upon the Reasons afore-mentioned, according to the general Understanding and Usage of former A. ges. But upon this Supposition, he tells usof feveral Bills that gave furtherance to the Reformation, to which the Bishops did not assent and would never have passed, if they had had a Negative upon them. But by his Favour, thek Instances of his, are great Arguments of those Bishops their Sincerity: For they must needs be under great and violent Prejudices: Besides, e very great man (as the Author of the Letter well knows) is apt to value himself, and care not to be accounted a light man; and the high er in place, the more unwilling to be found in Mistake: and they are not content, if Oh Men.

Quæ juvenes dedicere senes perdenda fateri.

There is good Hopes therefore, that or Rightfully Reformed Bishops will be the less that will give up the Cause of Reformed Christianity, and will not be out-done by the Popish Bishops in Constancy, when they have a better Cause.

- I must likewise take notice, to do the Spiritual Lords Justice, of the Behaviour of the Gentleman

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tleman in Folio towards the Bishops. He takes notice, and that dutifully; of the Satyrical (for he calls it) Language of the Pamphleteers against the Court, and the greatest Scurrilities: with which the House of Commons are asperfed; but has not heard, fure, of any against the Bishops, and the whole Ecclesiastical Order; for he makes not the least mention of any fuch: But because they shall not escape (besides that in his Book he declaims an' apagis, against the Order, and seems so fond of this Office, that he forbids all other the use of the Cart) he tells the Story of Hephestion and Craterus, the one of which loved Alexander, and the other the King. By this Apologue, I doubt not but he intended a: Slander, and to fignific thereby supprestly a lewd reproach, viz. that the Bishops are not true Servants of the King and Government, but of themselves; than which a falser thing, I hope, cannot be faid, nor a more malitious thing imagined, if not true: For he may know, that they are better men in their true Character, than his Loyal Patriots, that are true to the King and House of Commons: For they have, I doubt not. I am fure they ought to have a care of the whole Government in the Integrity of its Constitution.

The Bishops well know how much the People are concerned in the Greatness of the House of Lords, which establisheth the Throne, and makes and supports the King Great; and by

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their Power and Interest, make his Govern ment equal; to which they contribute no small Share; for to them is entrufted, by the Author rity of our Lord Christ, the Conduct of Re. ligion; and that mighty and momentous Of fice hath commended them , and advanced them to the State of Peerage mand will com nue them in great Authority with the Po ple, as long as the Nation continues in anyd gree Religious The Temporal Baronage can not want them, in the Support of that mighty Province that belongs to that House. In them the People will find their Interest, as long as they can value Wildom and Religion, that is as long as they are Christian Men; and by them the Kingly Office will find it felf fervel, as long as true Religion and Wisdom can min fler to the Support of Government, and wife and good men under the greatest Trust, and in the highest Dignity in the Government, an be fit Councellors and Ministers of State.

The Octavo hath also a hint to this purpose; for pag. 30. where he brings in the Case of The mas Arundel Arch-bishop of Canterbury, when all the Bishops made Sir Thomas Piercy their Procurator, he says, That uniting in one many argued a great Unanimity in the Voting of the Prelates; which seems, saith he, hath ever been. The meaning of this is a sty Disparagement of the Bishops in their Voting, viz. That they have one Common Tie and Dependency upon the Crown, that,

that determines them to that Interest, and pro-

duces the Unanimity of Voting.

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But are the Bishops more depending, because they once for all received their Temporalities from the King, than the Temporal Lords, who are commonly Officers of State, and otherwise depend upon their Prince's Favour? Is not the Bishops Advancement rather a reward to their Eminent Services performed in the matter of Religion, of the greatest Importance certainly to the State, and a Recognition of the excellent Character of those men that are preferred to that Office, than a Bribe upon their Actings, after they have received that Favour irrevocable?

-Do not we know that the Services of Churchmen are rewardable upon the Churches Stock, and that the King need not impair the Royal Treasure, to pay Thanks to Episcopal Men, whose Worth doth befpeale the Royal Favour to that Preferment and Advancement? Are not the Temporalities of the Church the King's only to give, but not to retain? What evil Prejudice or Obligation can this be to any man, to ferve the King unfaithfully, who hath chosen him perhaps, though there were others but as equally fit for that Office: for we ought to suppose no other disposition of those Dignities. than what is just and fit, in our general Discourfes, however things are administred in particular Cases.

Is not this an Office, together with its Main duc tenance, of the Provision of the Law, and not of fire

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But to remove that Scandal of their Unani Co mity in voting, which fome have reproached with the scoffing Term of a dead Weight, it may be mu considered, that Men of the best Judgements and Honesty mostly agree: That Variety of Judgments proceeds oftner from Passion and Interest, than from the Difficulty of the matter de bated. It mostly grows, either from want of Integrity, or want of Judgment. Agreement in Votes, is an Argument therefore of true Judge ment, and unbiassed Integrity: As it is also farther, of a good Correspondence amongst themfelves, of previous Debates, and more mature Deliberation. Besides that it is no unusual thing in difficult and lubricous Affairs, for many to compromise the matters to a few, or to the Majority of their own Numbers, and abide the Refult of the major part.

But because this matter of Exception to the Interity of my Lords the Bishops, in the great Affair now in Agitation, is argumentum ad hominem, and gives Prejudice to the true Right and Merits of the Cause; and is the most prevalent and hopeful Argument, if not the onely one that our Adversaries can rely upon: For whatever the Causa justifica, or Pretence be, for the espousing of any Opinion, or part of a ny Controversie; if the Causa suasoria, the Inducement,

ducement, and true moving cause thereto be of firong and perswasive, the slightest Reasons will be a pretence for Confidence, and the smallest Colour of Right shall prevail finally, and in the last Issue, especially where the Parties concerned must judge, or by their Power can make their, Will and determinate Resolves to obtain to the biggest purposes. I will therefore farther add:

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That we well know what a high Effeen their true Character doth deserve. That they are intended the Light of the World, the Salt of the Earth: If the Salt has loft its Savour, wherewith shall it be Seasoned? And if our Light be darkned, how great is our Darkness? The Bishops know, that the World will not be kept in Order, by meer Designations of Trusts, but by Execution of those Trusts; not by abstract Charecters, unless they are put on, and effectively worn. The World will not be put. off, that there is no Provision made in the Government for reasonable Expectancies of all that can make a People happy, if we are difappointed in our just Expectations. They know for what high Ends they are advanced to their Secular Dignities. What was it that hath thus advanced them? Was it not the reasonable Expectation that Christian Princes and Governours conceived of their excellent Vertues, that they would out-do all mankind in firm Constancy, a vast and extensive Charity, unrelenting Fortitude, inflexible Justice, unmoveable Faith

Faith and Loyalty Pland unbyaffed Sincerin appo What Temptations can their Lordships din that that they should not, or we Reasons to belle falls that they will not, put forth all those Chille falls Vertues in Heroical Degrees, which the Wouldes will not give them leave to exert onely common measures? They will find it necess fure to be now Confessors, for the Support Happines of a poor diffracted Nation, a and great People. They will, no doubt, in due the Greatest Potentate To Pussice (if the be any fuch) who hath unhing d the Given ment, and lap'd the very Foundations of the Constitution; and will never Confent to Pardon of fuch Sins, That are not to be h doned in this World, there in the World of t come. It id ion

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Can they fuffer the true Christian Religion of which they are the chief Ministers and Con tors, to perish by their timidity and cowarding Can they fuffer al great People committed to their charge, to be deffroyed into an Anarch, and defert that Prince whole Beneficiaries the are; and not interpole for the faving of him and his Government, by faithful and whe Courfel 3

To suppose lich things as are morally impossible, is unreasonable, and to fear where no fear is." For they, if they were wholly fectilat, and were guided by nothing but a fecular Interest. can confider that the world is impatient of difappoint. erin appointments. That they hate nothing more than deceits and abuse of trusts; and that he that falls short, and goes less than a just expectation, falls into the lowest and vilest contempt and despest scorn. A see that he had been a see that the bear and the see that t

But this is not a time fure to lessen the Prelates, to take from the Bishops any just advans tage or honour, when that the contempt in this latter age thrown upon them, and the whole Order Ecclesiastical, and the mischiefs that have naturally enfued thereupon, have brought our Nation, Religion, and Government, to a most miserable state, a most desperate plunge, out of which I pray God we may be able to emerge! 75

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The Contempt of the Bishops and Olergy made the People despise the publick Establishe ment, chuse Teachers not much wifer than themselves: And they have thereupon multiplied vain Opinions and Divisions, and true Christianity is scarce had in any Consideration. A theilin and Profanencis, upon this Stock, is come to an enormous Growth; which thrives the fafter, by the vain Opinions and Immoralities of the mistaken Religionists, by which the Atheists take the Measures of true Christianity; and in Consequence of this, Popery is arrived to a vast Increase in Power and Interest, and threatens us. and the little Remains of true Reformed Christia anity, with an utter Overthrow. The true Christian Religion is not generally understood, and hath lost almost all Credit and Belief, in a Christian Nation. So So that it feems to me, upon the Confiden fign tion of our present State, almost necessary are that the Truth of the Christian Faith should mar be again demonstrated in Flames, to this life lead del, flagitious, and degenerate Age; that No Stains of the Christian Religion must be wall ed off by the Blood of the Sincere Professor That the true Faith should be better under stood, as it will be by dying. Thoughts, and vain Opinions be destroyed, and burnt up like Hay and Stubble in the Fire of Perfecution For then we shall understand what it is that worth dying for ; and that which is not worth dying for, is not worth disputing and dividing for in our Christian Communions, with bread of Charity. Then our Guides, the Holy Or der of Bishops, and other Faithful Pastors of the Church, may show their Sincerity, and an poar of what Value they are of in the Conduct of Souls, by their wife Apologies and Noble Confessions and Martyrdoms for the true Chri-Rian Faith, and recover a due place in the Peoples Reverence and Esteem for their Successors. And if God, in his all-wife Providence and Care, which will never be wanting to his true Religion, shall think it necessary by this means to recover and restore it, let this Fiery Tryal come; let it come:

And then, I doubt not, but we shall have OHT ny sylvoi mesistres & mesistres, used in Scripture for the Prelates of the Church, to fig-

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fiden fignifie the high Esteem they had of them, and are the same with Leaders, Captains and Commanders; many Crammers, Ridleys, and Latimers, leading up their Troops of Confessors, and a t the walk Noble Army of Martyrs, who will again feal the Christian Religion with their Blood; and a more Glorious Church shall recover out of the Ashes of this.

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But God grant that we may dispose our selves by more easie Methods, to recover out of our fickly Estate, when we know our Disease, and may be cured by more gentle Remedies. I am fure that nothing can fave our Nation and Religion, but an excellent Clergy, and a high Esteem of them amongst the Laity. And for this Reason, I have earnestly concerned my felf for the Bishops Right of judging in Capital Causes in Parliament, that they may want no capacity of making a gasping Nation live; and thereby, of recovering themselves and their Order into a high Veneration, that they may more effectually administer to the Advancement of God's True Religion and Virtue, and making this Kingdom happy for Succeeding Generations.

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PREFACE.



Cannot but take notice, That my honest Design in my Argument and Post-script, to serve the Church of England, and therein the Nation, hath

been by many perverted: and how it hath been endeavoured to make them loose that effect to which they were sincerely directed, I have therein asserted the rightful Authority the Bishops have in the Government, and represented the just Expectations the Nation hath of their due Exercise of that Authority for the publick good; and have endeavoured to remove the great prejudice against their

Order; especially those that are occa and fioned by the Mistakes of the Inferiou for Clergy, for such we have taken notice aga of, as those which do most hurt, the esteem and affect them with the greatel dishonour and danger. I have therein faithfully defended the Authority and Power of the Bishops in the Govern ment: But these I take to be but other Names for the Duty they owe to the Common-wealth. Civil Honours and Dignities declare respectively the trust that the Government hath plac'd in the persons under such Characters, and admeasure the Duties and Offices that are expected from them. The present state of the Kingdom doth most importunately urge and require, that they should perform their duty in its fullest and utmost extent, and thereby vindicate the honour of their Order: It cannot fail being venerable, in the same degrees we find it beneficial. All positive Duties indeed have an indefinite latitude, and

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and we have a great liberty in the performing of them: They are not peccant against the rule of Virtue, who do not always exhibit to us the most Excellent Actions. It is not expected from the Duty that every Man owes to his King and Countrey, that he should serve them always to his utmost Capacity, and with an Heroical Bravery. But he that doth not lend all the affiftance to their fervice which his place requires, and his power can perform, in the greatest Exigency, in the Extreamest need, is a wretched Traytor, and Betrayer of his Countrey.

In the Postscript I have by no means lessened the Authority of the Church, or narrowed their Capacity of serving the Publick-weal. But with great fatisfaction confidered their Authority, and how much they may contribute to the uniting our Distracted Nation, almost ruined by our Divisions, which are occasioned and promoted by the Enemies of our

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Church, and principally designed for her Destruction. If we loose our Government, for the sake of her ruine, and in order to that we loose it; and which is worse, if we loose it, it must be by the instrumentality of her Clergy: if the Government be not preserved, the

Church must perish.

Therefore I did not confine my thoughts to a Defence of the Church her Rights, but employ'd them for the Prefervation of the Church her self, and did endeavour to remove some great Prejudices and Mistakes, that assist the designs of her Enemies upon her. Mistakes to which our Enemies owe all the power they have to hurt us; in virtue of these Mistakes, their malice is onely considerable; it could never have affected us, nor we brought within any danger or fear of them, if these vain Opinions had not been entertained by some of our Churchmen.

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And yet two Discourses so agreeable in all the parts thereof . one to another united in Design, and that could not possibly but concur to the thoughts of any man that truly and heartily design'd to serve to the prosperity of the Church and State, are endeavoured to be set at variance with themselves; and some there are so false and unjust, as to suggest, that the Argument for the Bishops Right, was written to set off the Postfcript with some advantage; and that the Author design'd to gain from the Argument a more pardonable liberty of inveighing against the Church-men in the Postscript.

If this had been the conceit of men of the Popish Faction only (and not also of many Gentlemen whom I principally designed to serve, and in them the Church of England, thereby) I should not have thought it worthy my notice. For every man understands it is their business and design to divide the Church-

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men from the Interest of the Church, And set the Church against her self. To are rob the sheep of their shepherds and Con the pastors of their flocks. They know and (and true it is) that no good and useful bot Constitution can ever be destroyed but the by it self; i.e. by ceasing to be for And that the people will never pan from any thing wherein they find their benefit and advantage; except they cal deprave our Church, they can never hope to destroy her. They have conrupted some of our Church-men with Principles that subvert our Government and betray the Rights of our people They have debauched the Manners of our Church-men, and lessened the Authority and Esteem with the People The Order is enflav'd by Collation Preferments upon less worthy men. Qu beneficium accepit libertatem vendidit They have raised a bitter zeal against that Separation, that they themselves have contriv'd, fomented, and promoted. And

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th, And it is brought to pass, that those To are accounted Church-Fanaticks, though an Conformists, that cannot contentedly see now and endure the near approaches of ruine ef both of Church and State. These are but their fear and their hate. The Sons of Anak, the Giants of the Land, that they they imagine so insuperable, that they are for making themselves a Captain and returning back into Egypt. Against these they exercise the keenness of their Wit; and to supply themselves with matter of Raillery against them, they lick up the Vomit of the Popish Priests, and whatever is malitiously said by them against the first Reformers, is daily repeated by our young Clerks out of the Pulpit, with advantages of immodesty and indifcretion, for the differvice and dishonour of their Order: with the impudent Lies that the Papists have forg'd against Luther, Beza, and Calvin, and other renowned instruments in the Reformation, they disparage the Reforma-[a4] tion:

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tion: of great service this to the Churd gar of England, and the Protestant Relig not on. These young men, like Dotterel the Apes, and Parrots, who have no mon do understanding than those Animals, at perpetually repeating any thing, thous never so destructive to Church and State, that is suggested by any Popil Mercenary Writer, if he hath but the cunning to bestow an idle Complement upon the Church, or calls Rogue and Villain seemingly or in pretence for their sake; especially, if he can furnish to their young invention any Topicks of Raillery against an imaginary Presbyte ry, and against Parliaments, an essential part of our Government, and the fecurity of our Liberty. A very fair capacity and recommendation this (as they imagine) to Preferment. These are the Men, I confess, for whose fake I writ the Postscript. And if it can conduce any thing either to reform them from their Errors, or else to make them of no regard

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gard with the People. That they be not hereafter taken to speak the sense of the Church of England, and we ty'd down to certain ruine by her pretended Authority. And especially that she may not hereafter suffer under the scandal of fuch forward and precocious youths. I say, if I can obtain by my endeavours any of these effects in any degree, I reckon I have performed an agreeable service to the King and Kingdom.

We have a fort of young men, that have left nothing behind them in the University, but the taint of a bad example, and brought no more Learning with them thence, than what serves to make them more affured and more remarkable Coxcombs, who will undertake to discourse continually of the Interest of Religion, of which they have no manner of sense; and of the Constitution of our Government, of which they are utterly ignorant.

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These take our degenerate Gentle men to be the great Supporters of ou Religion and Government, whose Lov alty confists principally in Rounds of Brimmers and Huzzahs; who have no so much leisure from their repeated Ex. cesses and Debauches, as to consider that they are not the wifer for their Cup In these Loyal Debauches too many o the young Clergy do most scandalous assist, for the service of the Church, and for maintaining the honour of their Or der. This, if the Superiour Clergy do not in time redress, they will betray our Religion, and ruine the Government both in Church and State. These degenerate Levites are magnifying perpetually the Priviledges of their Tribe, extolling their Order, yet in terms that disgrace it, but by their Lives they vilifie it. The most degenerate off-springs of NobleFa milies, are the greatest Braggadocio's of their Discent: Those boast most of their Ancestors, who dishonour them by their Relation. The

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The Jews did not boast more of their Temple, the Templum Domini, the Templum Domini, at that time when they had filled up the measure of their iniquity, and the destruction both of their Temple and Nation was at the door, (their Temple had not one stone left upon another, and they carried into Captivity) than these Gentlemen do of the Church of England, when Popery is like to be let in upon her, by their wicked follies and indifcretions: Popery, I fay, which by some Doctrines undermines the very foundation, and by others unroofs the Edifice, and defaces the Walls of Christian Faith, and leaves nothing thereof but Altar-stones for their Idolatrous Sacrifices: what ever the fates will be that they are pulling down upon the Nation.

The Apostolicalness of their Order will not secure it, if they do not fill up the duty of their Office, no more than the Templum Domini did priviledge the Jewish

Jewish Church and Nation from de vener bona struction.

A Temple without a Numen, and a fed 2 Undedicated Church, are things common Jas n and profane. They may remember there are Churches of Christ that do makes shift without their Order, and Religion need not perish though the Order fail: but may subsist much easier than Nations under Change of Governments, which yet generally last longer than any Nothing can subsist longer, one form. or at least to any good purpose, than it answers the ends of its Institution; and if it do not, it is much better that it should not continue than that it should subsist.

Grotius in his Book De Jure Summarum Potestatum circa Sacra, assigns these Reasons for the Discontinuance of Epilcopacy in some Churches, viz. Longa atque inveterata jam plane Officii Episcopalis depravatio. Nomen & Eminentia Episcopalis eorum culpà quibus obtigerat omnem sui reverentiam perdiderat, & in odium

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venerat plebis. Non debent (saith he) res bonæ damnari quia sunt qui iis abutuntur, sed verso in morem abusu intermitti res ip-Sas non est infrequens. The young men of the Church of England have their Heads filled with the Imagination of a numerous Sect of Presbyterians amongst us, and have form'd a frightful Idea and Character of this Imaginary Sect, as fworn Enemies to the Episcopal Government. Whereas our old Puritans and late Dissenters, (I speak of the gross of them, for they are not answerable for the Fools and Rogues sent amongst them, or at least spirited by the Roman Priests, no more than any other Party or Division of men are for the Rogues that pass under their numbers or respective denominations) have not disliked the Episcopal Government; though by their senseless and unaccountable scruples, they have depriv'd themselves of the benefit of the Communion of our Church, and thereby give so much scandal to the Government,

vernment, and make the Popish Pla clare considerable, which can no longer sub Tale fift, than they are pleased to continue exhibit obstinate in their conceited follies.

They beg to be re-admitted, to have tang the terms of our Communion made easie, sum by relaxation of a Ceremony or two nam and a few matters of Scruple: To be received again under the Governance and Guidance of our Church; and are qui ready to acknowledge the benefit of the Episcopal Order in the Church of Christ. Let this be askt by any man, who doubts the truth thereof, of any man that is confiderable amongst our unhappy Difsenters. Dr. Durel in his Book called Vindicia Ecclesia Anglicana, tells what a high opinion the Reformed Churches abroad have of our English Episcopacy; and that the Bishops were deposed by them, because they would not assist, but oppos'd, the Reformation, not of disliketo their Order. Mr. Calvin in his Opusc.de Necessitate Reformanda Ecclesia, hath declared

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clared himself to be of the same mind; Talem (saith he there) nobis Hierarchiam exhibeant in quâ sic emineant Episcopi, ut Christo subesse non recusent; ut ab illo tanquam vinco capite pendeant, & ad ipsum referantur, in qua sic inter se fraternam Societatem colant, ut non alio modo quam ejus veritati sint colligati. Tum vero, nullo non anathamete dignos fatear, se quis erunt, quos non eam revereantur, fummâque obedientià observent. His very good liking and great approbation of the Order, appears plainly by the earnestness and vehemency of his stile, whereby he expresseth himself in the matter. Beza de Minist. Evangel. Gradibus, Cap. 23. affirms. Essentiale fuit, quod ex Dei ordinatione perpetua, necesse fuit est & erit, ut Presbyterio quispiam & loco & dignitate primus Actioni Gubernandæ præsit cum eo, quod ipsi divinitus attributum est, jure. Peter de Moulin, Part. 2. Thes. 33. Episcopos Anglia, inquit, post conversionem ad sidem, & Ejuratung

ium Papismum asserimus fuisse sideles I qua Servos, ne debuisse deserere Munus quique Titulum Episcopi. Monsieur Drelincon great in his Letters from Geneva, upon L'Chu happy Restoration of our King, 1660 sever faith, Quandoquidem Germania & Hel stitu vetia suos habent inspectores & superin app tendentes, Dania vero ac Suecia suos L and piscopos, non video cur quis offendi debea and quod Anglia sui etiam sint Episcopi. Quo Let si eadem Regminis forma apud buju Regni Ecclesias non obtineat, id ideo sit. quod non convenit cum rerum nostrarum statu, cui nibil aptius excogitari potest quam pastorum aqualitas: verum si Deus, apud quem omnia possibilia, & in cuju manu sunt Corda Regum ac populorum Monarchæ nostro, & omnibus illius subditis, aut saltem maxima eorum parti eam gratiam indulgeret ut reformationem Evangelicam amplecterentur, meo quidem judicio, impossibile esset inter tantum pastorum numerum æqualitatem retinere, compelleretque necessitas ad instituendos quosdam qui aliqua

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Igua præeminentia gauderent præ cæteris, quique eorum moribus invigilarent. The great men of the French Protestant. Church, though under the state of a 60 severe Persecution, who follow the In-Ritutions of Mr. Calvin, do at this time applaud the Constitution of our Church, and speak of it in terms of high esteem and honour, as may be seen in the Letters of Monsseur Moyne, Monsseur de l'Angle, and Monsseur Claude, written to my Lord of London, Published by the Dean of Pauls, in his Book called the Unreasonableness of Separation. Dr. Durel, after he hath in the aforementioned Book, shewed that Geneva was a Free City of the Empire, of most ancient time, That the Soveraign Authority was in the Senate of that City. That the Bishop was Chosen by the Canons and Citizens, and Swore Allegiance to the Government before he entred the City; and that the Confuls of the City did take his Oath. That Petrus de [6] Baulme,

Baulme, their last Bishop, Anno Da and 1533. being detected of a design to has tray the City to the Duke of Savoy, for Tru from the City; and at that time the Ch 1 was, and for two years after continued by Roman Catholick; fo that what wing ly (if any was done to the Bishop) we wo done by the Papists. That two yes on after the Bishop fled from the punil tha ment of his Crimes, the Authority tur the Senate attempted the reformation of Religion. After this, I say, Dr. D. rel thus concludes, Confidenter dicam G nevenses cum Religionem emendarunt, En copalis regiminis ab Ecclesià Elimination nem, reformationis partem nece sariam hans duxisse.

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Besides, all amongst us that have the name of Presbyterian called upon them at the pleasure of the Popish Faction, fubscribe to the Nine and Thirty Articles, in what they declare of the Doctrine of the Church of England about Obedience to our King and Governours,

has any of those that boast themselves the True Sons of the Church of England.

Indeed Scotland hath been difgrac'd by a vile fort of Presbyterians, the onely true Presbyterian Sectaries in the world, in any confiderable body or union. These men have deservedly put that name under eternal infamy, by their turbulent and contumacious carriage against the Kingly Authority.

But to speak the truth, this is not imputable so much to Presbytery, as to the barbarous Manners and rough Genius of that Nation. Though it hath afforded some men in all Ages of great Excellency in all sorts of the most commendable Qualities. That Nation was infamous for Disloyalty, and a barbarous Treatment of their Kings, before Buchanan and Knox were born. The Scots boast of One hundred and sifty Kings in Succession in that Kingdom: how many Names they have seigned to make out

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the boast of the Auncientry of their Kingdom, we do not know; but certain it is, they really Imprisoned, Deposed and Murdered Fifty of their Kings a least, before the time of Mary Queen of Scots, whose prosecution was promoted and assisted by the English Bishops. A fine Kingdom that, to make Experiment

and try Conclusions upon!

There is little reason to charge the Guilt of the unexpiable Murder of ou late Excellent King, for which at this day we are doing most severe penances upon Presbytery, which was not though of here in England till the War was be gun. The heats that produced that unhappy War, were from other Causes and Reasons, as every body may know. But when that War was once begun, (as no War can be managed by fore-established Rules and Measures) it did not ftand within the reasons and first designs thereof, but was profecuted and managed by fuch means and measures as were

were necessary and possible. This will always happen more especially in a Civil War, wherein though both parties share in the Causes, yet the Guilt to be

fure belongs to the Rebels side.

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The Parliament in the Course of the War, in their distress, prayed Aid of the Scotch Nation, who was shortly before entered into the Covenant. They refused them any Assistance except they would enter into that Covenant which they had passed upon their own people. By this accident that part of the Nation that was engaged in that unnatural War, of the Parliaments side, were imposed upon by the Scotch Presbytery. But after the Covenant was thus imposed, they still retained the English Loyalty, filled the Town with Protestations and Remonstrances against the Kings feared Murther; declared out of their Pulpits against the Actors of that detestable Tragedy; were continually contriving to restore our present King $[b_3]$

to

and of their instrumentality in his Restoration, the King himself is very sensible.

I wish the Church too were made sens. ble of the extinction of that prejudice the Scotch Covenant created against her; for though God be thanked the hath fur vived almost all of those deluded Cove nanters, yet the apprehension of the danger, or the remembrance of the evil at least, will return with the mention of that name, and render it very displeasing I wish, I say, that prejudice was removed by their frank Declaration of their good liking of her Order in general; and by their humble defires to be spared in the matters whereof they yet remain in doubt, by the Indulgence of the Church: That we may not incur the danger of loosing our Religion and Government, by the scandal that is given to the Church-men at the old remembrance of what hath been done here by some that were of the Presbyterian Name.

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For this matter of Offence they of the Popilh Faction do with mighty advantage to their Villainous design cultivate and improve. They stigmatize all that oppose the Popish Plot, with the Name of Presbyterians, and thereby would denote them Enemies of our Church-Order.

By this means they have brought many, too many Eminent men of our Church to at least a dead Neutrality, as if things were come to this pass, that they must perish either by that or the Popish Faction, and had nothing left them to do but to chuse which way our Church shall be destroyed: A cold comfort this would be, that whatever way they should take, they must assist to the destruction of their Order.

Upon this rock we are like to be split, this makes our deliverance to stick in the birth, and upon this hinge the fate of our Religion and Nation will turn. Lord, what a prodigious thing is this, that

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is comes to pass in our age. Religion it: a self must be the devoted thing to the rage the and folly of the Priests of that Religion the Let them in the Name of God consider stand what iniquity it is to declame against the lutio faults of others, and not endure to side hear of their own Crimes: To hate one the another for those very proceedings that their own faults occasion: where the the fault is in both sides, the fault is in nei- dia ther, so as they may justly accuse one a sho nother: and yet they will both fall up der a most severe Condemnation, tobe fure, in the next world, if they do not both miss their aims and be confounded with guilt and disappointment in this.

I wish it were considered, that scarce any Nation ever yet perished, that was so blinded in her own concerns, that she had not discerning men enough to have preserved her from the destroying Evil, if many good and wife men did not perswade themselves, it was better to suffer it than to endeavour to prevent

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the dislike they have conceived against the other, determine with themselves to stand Neuters, whilst they want Resolution to oppose the dangers that one side stand threatens, and think the disorders of

the discontents incorrigible.

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It was a wife Law of Solon, That if the Common-wealth at any time should be divided into Factions, that the Neuters should be noted mith infamy; by which every man was obliged to take a side or Party;and all the virtuous, peaceable, and modest, were engaged to appear openly in the concernments of the Government: he concluded affuredly, that by this means Peace would be more easily restored, and terms of an accommodation more readily invented and entertained; the Factious Knaves of both sides turned out of Office, their Evil Designs disappointed, and the ruine of the Nation by the Extremities of wicked men prevented.

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The Causes of the differences would as b be better understood, be rendred de of and conspicuous, when the honest me sha (fuch as can have no interest but the publick good, whose Authority is mor prevalent with the people than theda rest Reason) do declare them: and those that are mif-led and abused into Ex treams, would then unite and conspin against those who gave the first occasion to the Divisions, and promote them. As did the Factions of the Colonnois and the Vrfins, who having discovered that Pope Alexander the Sixth fet them stillat discord and variance amongst themselves, fo by their Calamities and Falls to encrease the strength and power of his Son Borgia,

Borgia, they fell to agreement among the themselves, and made head against him

their common Enemy.

If all that are true Protestants, and true lovers of our Government, would declare themselves on the behalf of our Religion and Government, in such terms as befit honest men, and as the Exigency of our present state shall require; we shall find the numbers of Addressers reduced to the Dukes Pensioners and Creatures. The number of Phanaticks made so few, that the Papists would again become the Fautors and Defenders of Fanaticism, as they were about ten years fince, lest the numbers of Fanaticks should not be big enough to make a Scare-crow for the Church of England, or the Schism not considerable enough to difgrace her.

All discerning men see, that the late Addresses have been obtain'd by application: That the designe therein was to make Voices for the discontinuance of

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Parliaments, and for a Popish Succe

If the People are pleased with the things, there is no wrong done them and if we affect a change of our Religion and Government, it may be cally obtain'd.

The King hath no reason to consen to disinherit his Brother, if the People is joyce in the hopes of such a Successor or at least will acquiesce under that fate but if we would avoid it, we must de precate it in such applications to his Ma jesty, as consists with true Loyalty, and with such earnestness as the matter re quires; and at the same time represent the smallness of the numbers of Address fers, and the inconsiderableness of their quality. Thus his Majesty would understand better the Sense of his People, especially when most of the Addressers themselves shall, by joyning in such Applications, shew what they meant by Lawful Successors in their Addresses: And

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And that when in the same Addresses they did engage to serve the King with their Lives and Fortunes, they did not intend to subject themselves and all that they have, to his Majesties absolute pleasure. In that they thank his Majesty for his Promise of frequent Parliaments, they desire them; and when they thanked him for his Promise to maintain the Protestant Religion, they desired the continuance of it, and such a Law as is abfolutely necessary for its preservation. Then it may appear that the Abhorrers themselves did not understand that the name of the Earl of Shaftsbury in the business of Abhorrence, is but like the name of John a Styles and John an Oaks, of Titius and Sempronius, in putting a fictitious Case: And that the onely Question askt, was, Who are the most damnable Plotters at this time, the Protestants or Papists? And that this was the Question intended to be put to the People in the Sollicitation of Addresses of Abhorrence, is evident. If

If we did dutifully represent to from Majesty these Proceedings, as the Artso our Enemies for dividing us, and Methods of our designed Ruine, should not be undone; and there is no thing more than this necessary forthe preventing of our Ruine, since we have

fo gracious a King.

Our King is duly stiled, Pater Patria he will not suffer his People to be cale mitous (as no good Prince can suffer his to be) from any cause whatsoever that is to be removed; no, not from their own Fears and Jealousies, if they are innocent, reasonable, and probable The Affections of a Prince to his Peo ple, supersede his Affection towards any private Relation: So strong is the To of Duty upon him, from his Office, to prevent publick Calamities, as no resped whatsoever, no not of the Right Line, can discharge; nor will he himself ever think, if duly addressed, that it can.

By the Kingly Office, he is taken up from

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from amongst men, and is made a God to us; he is not to suffer the passions of a private man, so as to be swayed by them. In this high capacity. In the matters of the Government, nothing ought to determine him, but the Common weal, to which purpose all Governments are instituted.

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Besides, the excellent humanity of our King, which hath made his Reign fo clement, doth dispose him to a tender Affection towards his People committed to his care, and must powerfully incline and perswade him to do any thing that is necessary for preventing such Evils; which as they are greater than can be supported by his People, so if they come upon us, we shall never be able to emerge or recover from under their presfures.

There wants nothing but a universal desire of being happy, to make us so; and nothing but a declaring our steady abhorrence of the Evils we cannot sustain,

stain, is further necessary for preventing them: Our Enemies will be destroye meerly by our uniting; they haven direct Strengths of their own, all the hopes and confidence is in our Divi sions.

We may evacuate their defigne, by making it impossible, without a Conflict with any of the Evils fear'd: We shall have no Enemies from that time we are at peace with our selves; if we have courage enough to fay we are not content to perish, we are immediately safe. Our Traytors would disappear, if we had no Neuters; and we cannot lose either our Religion or Government, i we have a just concern for them. If the Protestants would in time understand that the single Art and Stratagem they have to undo us, is by dividing us, we should not assist it by receiving false and hated Characters of the several Sects that are amongst us from the Popish Writers; and represent them to our **felves**

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selves as more detestable than the Popish Traytors, and alike Enemies to the Go-It is no more agreeable to a vernment. scrupulous man about a Ceremony of the Church, to depose and murder his lawful Prince, than to a man of a nice Con-, science to be impiously wicked. Too. true it is, all Nations and Religions have. been sometime or other stain'd with the horrid guilts of Depoling and Murdering Kings, under a pretence of destroying, Tyrants, and vindicating their Country. from Oppression. The Bishops con1 cur'd with the Temporal Lords in deposing the second Richard: In an Address to that King they justifi'd themfelves therein, Ex Antiquo Statuto, from the Constitutions of the Kingdom; and Ex facto nuperrime dolendo, by which. they meant the deposing of Edward the, Knighton, one of the Decem Second. Scriptores published by Mr. Selden, gives us the Address in terminis. Until the Collectors of Diffenters Sayings can [c] justifie

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them not trouble the world any mon with the farrago of some of their wicked Sayings, thereof to make a Character of a Dissenter: for it belongs no more to him, as such, to be a Traytor or Rebel, than it doth to the Character of the English Bishops to depose their King, and cause his most Sacred Bloud to be shed and profan'd as a common thing.

But for removing the fears that our cautious Church-men have of Diffenters, which hath cast them into a cold indifferency and inert neutrality at this time, when if ever the Applications of an active Prudence are required from all honest men, and lovers of their King, Country, and Religion, I wish they would weigh and consider the mischiels on either hand: What the Popish Party designes, and what the Dissenters would What powers the Popish Party have, what endeavours they use to sorce their Superstitions upon us, and to change

change our Government: That the Dissenters have neither Power nor Will to destroy our Religion or Government: They are already of our Church, and it is expected that they should be Petitio ners to the Bishops for their intercession towards obtaining some Indulgence in Some little matters, that may bring them into an entire Communion with us. It may easily be known who are for the preservation of our Government, or disfolution of it, by their Desires or Abhorrences of Parliaments; (and who desires Parliaments more than Dissenters?) which would preserve our ancient Government in Church and State, and the true Religion establish'd among us, and recover us into a firm Peace and Union, by just and necessary provisions for their support. Whilst the Government is preserved, the Church is safe and fecure: for no man can fear that the King and the States of the Realm will ever give place to wild Fanaticism, and [(2] fuffer

suffer so excellent an Ecclesiastical constitution as we enjoy, to be subverted, for any Extravagancies that shall deserve the name of Fanaticism. But the pretences of our Neuters for their Neutrality, are not more groundless than their reasonings are absurd, by which they oppose the only remedies to the Evils that now beseture, and the greater we fear.

That absurd Opinion, Dominium fundatur in gratia, is charg'd upon those that are for the Exclusion of the Duke; and they think by pronouncing this piece of absurd Latine, they have at once put to silence and shame all the reasons of Nature, Religion, and State, that urge it and require it.

That there is nothing can be more abfurd than that *Dogma*, will appear, for that almost whole Dutch Systems of false and paltry Theology go to the making of it, in the most tolerable sense it can have; and for that it hath been

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improv'd into a most villainous sense, to give countenance to the vilest Outrages

of the German Anabaptists.

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But Dominium signify'd Property, not Government and Rule, until our admirably accomplished young Divines of this last Age, out of their great skill in the Latine Tongue, would have it so, for the service of the great Desender of the Protestant Religion, and of the Church of England.

All Rights, as well Natural as Civil, are for feitable by Crimes, in such measure and degree as Laws appoint, and as good Government requires: Notwithstanding *Grace* be not admitted a good Title to any thing that the Saint will de-

fire, though of the Roman stamp.

I confess, Natural Rights, (but they are very few) are not controlable by Laws, but are by Laws to be defended, and the free use of them to be justifyed and allowed, most certainly not to be condemned by any Civil Authority.

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A right in Nature every man hathto by live, until he hath forfeited his Life mo Whatever he doth that is necessary for his preservation, is and ought to be just the fyed by all Laws, though he kills, though and he breaks the Civil Inclosure of Proper- it is ty; which cannot, and was never inten- ly ded to shut out the Natural Right that every man hath in the last extreamities. Every man hath a right to his plank in a Wreck, though the owner of the Ship perish by him for want of it.

All the Authority of all the Legilators in the world united, cannot make unlawful any A& that is done in self-preservation: Sub moderamine inculpatation.

tela, where the man is innocent.

But Civil Rights are without iniquity alterable and controleable by Laws, and by acts of Government ordainable to the publick good.

Nothing is so intirely, perfectly, and abstractly Civil, as Government, the perfect Creature of men in society, made

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by pact and consent, and not otherwise, most certainly not otherwise: and therefore most certainly ordainable by the whole Community, for the safety and preservation of the whole, to which it is in the reason and nature of it intire-

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But we are told by some, that will at . not contest the lawfulness of Exclusion, That we trouble our selves with the fears of an imaginary danger: That we are endeavouring a remedy against the Evil that may never happen: That we im-. pertinently trouble our selves about providing that which we may never want or need: That the Duke may dye before the King: And if the Duke should survive, he neither can nor will change our Religion: That it is not lawful for any man, Occupare facinus quod timet, and to destroy the person whom he fears.

I wish it were considered on the other side, That if the Duke dye before the King, there is no wrong done to the

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Duke by Excluding him. It is one a ba his hopes and expectations that are a his off, for the preventing our fears; a pol But bility of hurt provided against, by she ting out the possibility of effecting it;an that not by any hurt to his Person, but meerly by disabling it: a Remedy pro portioned and fuited to the disease: desire to be eased of our fears, by a jul fecurity against them. But if the Duk should certainly survive the King, and could and would change our Religion they who thus discourse, seem to allow it lawful to exclude him. But for that they say the Duke, if King, will notor cannot change our Religion: let ever man confider his present Will and Power, and how far he hath proceeded to wards it, before he is entred into his Kingdom. These filly dreamers dishonour him, whilst they pretend to serve His Princely Virtues make him the more dreadful to a Protestant King dom. They who thus talk, makehim

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a bad man of that bad Religion, weak in his conduct, and feeble in his power: But how can this be, when they have instructed the Nation into absolute obedience, and have measured the duty of obedience by the Kings pleasure, and not by Laws: That the pleasure of a King is irresistable; some of them will not allow passive obedience to be at all obedience?

Besides, all caution is proportioned to the greatness of the Evils feared. No wise man ever left the sum of his Affairs to Chance. Where the Evils are not to be remedied or resisted when they happen, the caution is just that prevents them. If there be no remedy against the Evil we fear, but the Exclusion, the Exclusion is not onely lawful, but commendable. And for this we have the Authority of the Illustrious Grotius, under his general Doctrine and determination, Lib.2. Cap. 1. De Jure belli ac pacis.

It is Engraven in Capital Letters 11 At on the Foundation-Stones of all the Gand vernments in the world, That any po Fund fon unfit for Government, shall be & to d cluded from Governing. Though Food poin cannot read it until the foundations be time removed, and the Government subver. Sequ ted. That his Royal Highness hathren dred himself unfit for the Government, red hath been declared more than once, by on, the unanimous consent of all the States of the Realm; and how far the King hath been of the same opinion, may be conjectured by those Expedients that have been offered in several Parliaments, by Privy-Councellors and Ministers of State, and the Dukes greatest Friends. Onely fuch were those of the late Parliaments that opposed the Bill of Exclusion; but even these were for sequestring the Royal and Soveraign Powers and Authorities during the Life of a Popish Successor, and to leave him content with the Name of a King onely.

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An Indignity this both to the Name and Office: a thing repugnant to the Fundamental Constitutions: This tends to destroy the Monarchy it self: It points directly to the Evils of the late be times, and would make the Parliament Sequestrators of the Crown.

But such absurdities those that appeared most his Friends would run us upon, rather than a Popish Prince should become our King: Such an abhorrence they themselves had against the mischiess that would thereupon ensue to the Na-

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Is it fit after this, that the lawful endeavours to Exclude him, should be accounted a Protestant Plot; and those that desire it, for that reason onely, accounted Enemies to the Government, and Designers to change it? What madness is it, that his arrival amongst us should be welcomed with any tokens of joy! That Addresses should be made in his fayour! That we should court that mischief, that the

the wisdom of all our Estates in sever Gove late Parliaments have consulted how avoid. To turn so fond of a Poplies, Successor, as to be content to quit the P decla Parliamentary Constitution, our Govern ally ment, for his fake: for his fake we have Cap. had Parliaments Dissolved, and his prerato fence will not give us leave to hope for a Parliament.

But let no honest man be affrighted and put out of Countenance with any Imputations or Reproaches of Sedition, whilft he adheres to the Sense of all the Estates in Parliament, and that which hath been in some fort the Kings Sense too.

They are the Seditious, that propound deceitful Expedients, which tend to change the Government, and to Embroil His Majesties Kingdoms; who are contrary to the Sense of the States of the Realm; oppose the voice of Nature, and the common Sense of the whole Rational world: That are contrary to the

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Government, and do, as much as in them oplies, go about to dissolve it, by lessening the Powers of Parliament, exercised and declar'd in their Acts; and more especially in the Act of Parliament, 13 Eliz. Cap. 1. for that purpose was that declaratory Law made, to prevent our relapse into Popery, and the return of the Popish Superstition and the Roman

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These therefore are the only Murmurers amongst us against Moses and Aaron, our Civil and Ecclesiastical Reformers, who brought us out of the Land of Egypt, and out of the house of Bondage, who though dead, yet speak, and their Authority yet lives in our Laws, and is to be obey'd by us: we have no rules of Obedience to our Prince, but the Laws, and the Authoritative Declarations of the Government, which are called the Kings Laws, and the Kings Will and Pleasure (whensoever they were first made) in all succession of time. These Murmu-

rers are saying one to another, Le with make a Captain, and let us return in fortu Egypt; and yet they rub their for to 1 heads and fay, that they are clear of are gain-saying of Korah and Dathan an Quis are not of the company of Abrum Though if they will consider the flow they will find themselves in that comp ny: for those that were for a Captainto return into Egypt, Numb. Cap. 14. di continue their Murmurings, upon what ensued thereupon against Moses and Aaron, headed by Korah, Dathan, and Abiram, Numb. Cap. 16. and both are remembred as one offence, Psalm 106.

So miserably do these men abuse their Consciences first, and then abuse the Scripture to serve their turn. The unstable more than the unlearned, wrest the Scriptures, to their own destruction. These men against all congruity and analogy, do object the story of Korah and his Accomplices against the Adherers to Moses and Aaron, and reproach them with

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with the Names of those Evil and unfortunate men, who do what they can to hinder our return into Egypt, and are not for this Captain of theirs.

Quis tulerit Gracchos de Seditione querentes?

These are the most dangerous Schismaticks, a most mischievous sort of Puritans. The malignity of Puritanism is, to pretend to be more righteous than Laws. Where no Divine Law interposeth, but the matters are left by God to the prudence of Governments, and to their appointments and directions: to pretend Religion for their Schismatical Separations: to disobey their Governours, when they have no command of God against their injunctions, though they have no Law of God for the matter injoyn'd. But the Church-Puritans have some pretence for their Disobedience, because Religion is certainly of Divine Institution in the Substance and Essentials thereof: they pretend they keep close

close to the Divine Institution, to p they at the worst do but preposterou rules prefer Sacrifice to Obedience. But which Civil Puritanism which we complaint fession is neither Obedience to God or man, no shot yet Sacrifice. Sacrifice it cannot le that where Religion it self must be thevi Aim; not Obedience, but an enormon and monstrous sort of Disobedience they disobey not to please themselves but for meer mischief to themselves these are sinners against their own Soul with a witness. By departing from the Rules of Government, they are a bout to betray Gods true Religion, and the Government; and they must become either Rebels or Slaves, either Apoltato or Martyrs. But Martyrs if they be it will be rather of their folly than of Religion, and God will take no pleate fure in the Sacrifice of Fools.

The wickedness and folly of thete men, seems peculiar to this presentages it seems prepared by the Divine Nemels,

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rules and obligations of that Religion, which we have dishonoured by our professing to believe it, that so it and we should perish and be extinct together; that we should then pretend to be conformable to the Institutions of his Holy Religion, when we are in a course of

utterly subverting it.

What impudent hypocrifie is this, to pretend to obey our Governours for Gods fake, when they really are contrary to the Fundamental Constitutions of State, and by being so, assist to the Extirpation of Gods true Religion Establish amongst us by Law! Laws cannot be controul'd by the Princes pleasure; they oblige when his Personal Commands do not. Kings cannot make their Governments other than an universal consent hath made them; and such we are obliged to continue them.

A man may neglect his own private right without fault, for in that he is onely [d]. accoun-

accountable to himself. But the Righ of the Government, the Rights of ing Community can never be lessened neglected in their use, when the contion of the Nation requires their Exer cife.

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Where we have a liberty or rightn do an act, a supervenient necessir makes that act our duty. When the case occurs wherein that right is to be used, and for which that Authority was created, then they that have that right and that authority, are as much obliged to use it, as if there had been an express Law to injoyn them.

To be short, I wish the haters of Puritans would consider for themselves, a well as others, that there is an obedience of Faith, as well as of Manners, due both to God and our Governours. That our judgments are to be form'd by the rules of right Established by Law, as well as our actions to be governed in obedience to Laws commanding and enjoyn-

ing them. By that Faith that every man owes to the Government, he is obliged to defend the Constitutions thereof: they are more properly Covenants than Laws, which yet Aristotle calls so; they are the Communes Reipublica Sponsiones. If we do not form our actions in agreeableness thereto, and comport with them in our judgments, we do not onely disobey the Authority of Laws, but are also false Traytors to the Government, by violating our publick Faith.

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And now, O ye people foolish and unwise, ye stupid and perverse generation! will you still persevere to call that which is lawful, nay, necessary, nay, commendable and heroical, to which we are urged by necessity, to which we are obliged by the virtues of Religion to God, Loyalty to our King, the Faith that we owe to the Community, A doing Evil that Good may come thereof? Your own Condemnation must be just.

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if you be detruded amongst the numb of stupid Sots, reckoned amongst the that have lost their Reason, exting shed their Faculties, suppressed their tue, and have no other use of their Re fon left them, but what is to been them to greater Evils, as a just punk ment for their former abusing it. Y perversely and absurdly mis-apply word without sense: To the purpose that you may give countenance to yourin pieties, your utter neglect of Gods true Religion, the safety of your Prince, and the publick peace, and become Trayton to God, your King and Countrey, with out any sense or remorse.

I have but one Observation to make and one word of my self, and sall conclude.

The Observation is this: Scarce and Government hath been intestinely destroyed, but its destruction was from it self; which could never have happed, if the great men had not been guilty of connivance

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ny eit connivance at, and sufferance of Evils that might have been timely prevented. And for that after the long continued stupidity of the upper and lower vulgus, which are moved by nothing but what they feel; they have grown impatient of the smart of those Evils they could not, or would not foresee. To this Histories do give ample testimony, as they do also testifie, that Concussions in Governments, and Convulsions in State, proceed mostly from Flatterers, incroachments of power, attempts upon the Government, and decay of Faith and Trust in our Governours; and secondly, from Factious Demagogues. But these never appear, until the Flatterers and Projectors upon Government have first played their tricks: they wait as Owls for the twi-light, and Woodcocks for the winter; they are onely useful as revulsive remedies against the Evils of the other: but are without all manner of Grace, where the Government

ment is uprightly and duely Administra-And thirdly, and principally, from any frailty of Humane Virtue. When for its of better place, for the preservation rabl the Ancient Government, and Godstn Religion amongst us, will not endunto in t wit forego or loose some accommodation and or advantages of life, which they man be well without, and perhaps do not de ver kin serve; how can it be expected that he generality of Mankind should suffer an Martyrdoms in meer Loyalty, (that is) be contented to become miserable and and calamitous, and have no other payment for their miseries and Calamities they suffer, but that their Prince receive erein an imaginary pleasure, and falle fatisfaction?

When all is said, men will never go vern themselves by the Doctrine of the severe Casuists: But their virtue of Loyalty will bear the same proportion as their other virtues do to the Canon of Morality.

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The Preface.

The best service that can be done to any Government, is to keep it true to its own Constitution, good and tolera-

rable to the People.

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To this all wise and good men should in their several places apply themselves with Heroical zeal, a busic care, manly and firm resolutions; and thereby prevent, if possible, those Evils that Mankind will not endure and sustain.

If all that were dis-interested from any Faction, would interpose with wise applications to such purposes, Governments would not be so easily dissolvid, and Nations rendred miserable or ruin'd. If all that are illightned, and truly honest, would thus dutifully behave themselves at all times to their King and Countrey, both Demagogues and Flatterers would soon be assumed, confounded and forsaken, both by Prince and People, and Governments be of everlasting continuance.

But

The Preface.

But that no man may wonder at my bolder and the freedom I have used in these Discount I have only this true account to give of my

That Loyalty and Religion, and the Property rity and Peace of my Countrey, have the entirely conducted my thoughts, and guidelin hand. I have therein affirmed nothing but is publickly known for truth, and which Cause I defend requires to be said. It is the Cause of our Government, Religion, and Nation, the I advocate: The Cause is pleaded in its prop Court, before God and the King, Angels and Mon no other forum can take Cognizance of the Can To this the Writers of the other side hath mi ted us by, appealing thereto with their Resson I am free from any just imputation of malic and contumely against the person who is most concerned in the right disputed: I have conful ted therein his true Interest, which cannot be di vided from the Peace and Happiness of The Kingdoms. Justice her self will acquit me for having done any thing amis; and I can fuffer in the Censures of honest and reasonable In these Considerations I am encircled in a brazen wall, safe and secure; for as for the fears of Rage and Injustice, they shall nevers feet me.

Postscript.

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The POSTSCRIPT.

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free advice you gave me, concerning the publishing of the Argument for the Bishops Right of Judging in Capital Caufes in Parliament, and for afferting their civil Honours and Rights in the Government. Because it hath given me an occasion, both of vindicating the most of the Inferiour Clergy from those Imputations which you have remembred to me, and are commonly discoursed to their disadvantage, whereby they have lost their Esseem with the People; and also of rectifying the mistakes of some (for their number is not great) who have given too much cause therein of publick complaints.

You dissivate me from giving any assistance to the Rights of the present Bishops, for that the Clergy out of whom the Bishops must be made, have entertained Principles that are destructive to the Government. They affirm (you say) That it is in the power of a Prince, by Divine Right, to govern as he pleaseth; that the power of the Laws is solely in him; that he may, if he please, use the consent of Parliaments to assist the reason of

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his Laws, when he shall give any, but it is gre condescention in Kings to give a reason for wh they do, and a diminution to their most unaccount able Prerogative. You say, That they are for Popish Successor and no Parliament, and do and as in them lies, give up our antient Government and the Protestant Religion, the true Chillie Faith, to the absolute will of a Popish Succession ving him a Divine Right to extirpate God's trans ligion established amongst us by Law, and to evacuate

our Government by his absolute pleasure.

yet Our Government by a King and Estates Parliament, is as antient as any thing can be membred of the Nation. The attempt of altr. ing it in all Ages accounted treason, and the punishment thereof reserved to the Parliament by 25. Ed. 3. The conservancy of the Government being not fafely to be lodg'd any where but with the government it self. Offences of this kind not pardonable by the King, beautiful it is not in his power to change it. This is our Government, and thus it is established, and to Ages and immemorial time hath thus comined; a long Succession of Kings have recogni zed it to be such: And just now, when we we under the dread of a Popish Successor, someon our Clergy are illuminated into a mystery that hath been concealed from the beginning of 60vernments to this day, from the wisdomofall Princes and Ministers of State; That any authrity in the Government, not derived from the King

and that is not to yield to his absolute Will, was rebellious, and against the Divine Right and Authority of Kings in the Establishment, against which no slage or prescription to the contrary, or in abatement of it, is to be allowed. That all Rights are ambulatory, and depend for their continuance upon bis pleasure. So that though the Reformation was made here by the Government established by Law, and bath acquired civil Rights not to be altered but by the King and the three Estates, These men yet speak (say you) as if they envied the Rights of their own Religion, and had a mind to reduce the Church back again into a state and condition of being persecuted, and designed she should be stripped of her Legal Immunities and Defensatives, and brought back to the deplorable helpless condition of Prayers and Tears; do utterly abandon and neglect all the Provisions that God's providence hath made for her protection. Nay, by this their new Hypothesis, they put it by Divine Right into the power of a Popish Successor, when he pleaseth, at once, by a fingle indisputable and irresistable Edict, to destroy our Religion and Government. And these opinions, you fay, they are the more inclined to entertain, for that they believe no Plot, but a Presbyterian Plot; for, of them they believe all ill, and call whom they please by that hated name, and boldly avow that Popery is more eligible than Presbytery; for by that they shall have greater revenues, and more Authority and Rule over the Lay-men.

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This is a heavy Charge, if true; but it is in table (I am fure) but to a few, and not fogo the rally, as some malevolent men of the Pop pif Faction are industriously busie to have it. it were, I confess it might choque the constant ling. Resolution and Zeal of the most addicted to the fervice of the Church-men, and make the litt least very indifferent in their Concerns. For the mistakes are so gross and inexcusable, that the ter ought, if they could perish by themselves, to permitted to suffer the smart of their ownfolk ftr and to be corrected by the evils they are drain no down upon themselves, with their own but They deserve to suffer as betrayers of their on Country; To be profecuted with greater frim and ignominy, by all of the Reformed Religion Re than the Traditores were by the Ancient Christian ans: These their deserting of the true Christian Faith, being much less excusable than their fault that deserved that name, and of greater michin as of deeper malignity.

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How many of the Clergy-men are thus mile we know not; but they feem many more than they are, because they are most in view, and com often under observation, frequent publick hours and talk loud, because they want the Comple

ment of their Preferments.

But certainly, Sir, what you fay to be the de clared Opinions of some Clergy-men, is the bull ness now of the Papists to propagate.

Hoc Ithacus velit, & magno mercantur Atrida. Thele

These are agreeable to, and indeed make up the most modern Project and Scheme of the Po-

pish Plot.

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Since the discovery of their first Design of killing the King, and massacring of the Protestants, the they have taken such courage, by observing how little power we have to prevent their Design, that they have us in scorn, and in the vilest con-

the tempt.

They now think that we are not worth destroying, but by our own hands; that we are not worthy of their trouble, or the charge of Executioners of their providing. How entertaining is it to his Holiness, to find the Church of England, the impregnable Bulwark of the Reformed Religion, easily fall into his hands, by the unpresidented folly of some of her Sons, Reformed Religion, eafily fall into his hands, without the trouble of attacking her either by Force or Argument, which have hitherto wanted fuccess, and fuch attempts always attended with dishonour, and mischief to his See. How pleasant will it be to him to see us perish, and our destruction to be from our selves! With this he will answer all the irrefragable Apologies of the Church of England for her departure from the Communion of the Romish Church. Then he will say with triumph, our the Church destroyed her self, and perished by a bul Divine Fate, for her unwarrantable and Sacrilegious Schism; for so he will call our Follies, and impute them to Divine infatuations. manner

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manner of our destruction will be a better a gument, and of more force against the best of the Reformation, than all the Amments of all the Doctors of that Church to

day.

For this purpose, since the Discovery Popish Plot, it is, that Sir Robert Filmers line were Re-printed together, and recommend by the Title-Page and the Publick Gazet mm reading. Since the Discovery of the Plat have had variety of Books Printed to the in purpose; viz. To prove that all Kings as line are absolute by Divine Right. Since the Discore of the Popilh Plot, we have had men imply ed to fearch all our antient Records and Him ries, to find out something more antient than our Parliaments as now constituted, that it may serve as a pretence to take them sway. Since the Discovery of the Popish Plat, we have the memory of our late calamitous Wa revived, to raise a Panick sear of another, a to make the King believe that the genius the Nation is Rebellious, and that the Potts stant Religion it self is to be apprehended Kings.

It is difficult to tell how that late unhappy War began, or how it came to issue so Truscally in the Death of the Late King; though we know how it ended; viz. The Nation recovered within twelve years after the most deployed Death of that excellent King, into a re-

nowned Loyalty; and in spight of a great Armed Power, never before soil'd, ever victorious, then kept on foot for the Interest of a very sew men, restored our present King (may his Reign be long and happy) to the Government of his Kingdoms, without the least assistance of any of the Cavalier-party, and oblig'd a wary General in the head of a factious and republican Army to Loyalty.

Nay, within that time also, the Nation had recovered out of their partial Lapse into Fanaticism, bred up great numbers of excellent Schclars, who mastered the prejudices of those times, were reverenced by the chief of the Presbyterian party, and are the beauty and strength of the

Church of England at this time.

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The Presbyterians themselves were grown reconcileable to the Church of England, and had learnt by woful experience the mischievousness of Schism, upon no better pretences than what then might have been satisfied and accommodated.

When the King and Church were restored, Fanatism had expired, if some old peevish and stiff Church-men had not studied obstacles against an universal Accommodation, and some crasty Statesmen had not projected that the continuance of the Schism would be of great service some time or other, to destroy the Church of England, and change our ancient Government; which is now apparently the Po-

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pish Plot; and if ever it be effected, it will bete with this trick of affrighting the Church Sub-England with the apprehension of Fanatician ad and making them suspicious of Parliamenthei As many of them as are drawn into an opini deri of the disloyalty of our late Parliaments, the green illusions of the Popish Plot have passed up per them, and they are under the power of its to eee nations. But both the Loyalty of the late Part bro ments, and also how much it imports the Pla me ters to have it believed that they design up que the present Government, will at once be chul Ar understood, if it be considered what but of been done for the forging of a Protestant Plat, an (which was intended at the first opening to a lig tend to the House of Commons). Things to gi wicked, as would make a virtuous man ashamed ch of the Age he lives in. But after all endeavors If to find witnesses for their purpose, powerful line encouragements, and great rewards, they have Jo drawn none in to their assistance, but who are c publickly known for Rogues, or who wanted or Bread, or had no Reputation to loofe. If the falshood of this forged Plot had not been utter ly improbable, they might have procured better feeming, and more credible witnesses. They might fure have found in this Age men bade nough, not already infamous, to have testified probable Lye. But so necessary it is to the ly pish design, that a Protestant Plot be believed, that they are not discouraged at the manifest

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will be etection of their Conspiracies, Perjuries and reh subornations; but will still go on as if they icin ad a power to work miracles of villany for men their Religion, which is no better. Our mo-Pin dern Politicians have been most observant agreeably to their virtuous make, how frauds, perjuries and violence have prospered and succeeded in some particular cases, and have brought about some designs; they imagine such means throughly multiplied, to be able to conquer all things which they design. But these had fuccess by the permission of God, when one Villain hath been to destroy Plu, another, will not pass upon the Protestant Religion. Let them seriously in time despair, and give over such enterprises; For there is no Enchantment against Jacob, nor Divination against ors. Israel, the Lot of Gods inheritance, and his peculiar Care. If Mordecai be of the Seed of the Jews, Haman shall fall before him. It is matter of comfort to us, and despair to the Plotters, that not one of their Plots yet, but hath proved abortive, or they have been defeated by their very fuccess.

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Besides, pray let it be observed how this Defign of lessening our just confidence in Parliaments is otherwise carried on and promoted. It is now become the principal business of the Mercenary Writers for the Plot, to pick up and cull out all the enormities and irregularities of those times, the Vitia temporum, and stories of wild pranks of some beastly Fanatical

people,

people, that exceeded the common degene to de of those ill times into which the Nation by Mour discernable degrees so fouly lapsed, to make the Nation of an ugly Vizard; and this they clap undula fore to on four fifths of the Nation, upon all the cast i and adhere to our Government and Religion in the render them suspected of destroying insen English Monarchy and the Protestant Rem even for those very proceedings that they mit for preserving both. For the service of h pery requires, that what soever opposes it, mil branded with Treason and Fanaticism; fuch delicate persons as are fond of the m of Loyalty, though they understand mi what it consists; that hate the name of he tick, fince it is become as common a muco reproach, as the Son of a whore, thought understand not so well what it means, my b fure fo to behave themselves, as to be retime for Loyal and not Fanatical, by taking them fures of the one and the other, according the new notion of the Plot-Writers, and his come theirs with all their idle prattle. But them make their best of this foolish fort of m if that was all they could effect by this project

But they design further upon the Nation, wh to match the fears of Popery, with a fer a great of the like Evils to those of Forty on; 2 if these Plotters had power by their interest to raise a new War, when we have power and allthority in our Government, if it were exerted

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Mountebanks think it convenient, because the Nation was east into a Frenzy in Forty one, therefore now, when in perfect health, we are to be cast into a Lethargy to prevent our relapse; and in the mean time they intend we should perish insensibly and quietly, that way they design to

destroy us.

It is since the Discovery of the Popish Plot, that Popish Mercenaries have been hired to write virulent Libels against the Church, and bitter Invectives against Fanaticks. Out of the same Mint came a villanous Libel, called Omnia Comesta a Belo, against the Church, apt to render the Church-men suspicious of another detestable Sacriledge designed; and that loathsome Print entitled the Committee, or Popery in Masquerade. Many parts whereof hath no other reason of belief, but that they have been the Subject of some drunken Rhimes in former times; but it is in the whole an insufferable Libel against the Nation, by its application to this Age.

These Mercenaries are the Authors as well of treasonable Libels against the King, which they form so, as they may seem to come from the Fanatick party, to render the King jealous of them, as they are of the Libels against the Parliament and their proceedings, to breed misunderstandings between the King, Parliament and

People.

It is since the Popish Plot was discover The that Fanaticism is represented more in the F rable than Popery: That the Popish Plot, the m dent to the satsifaction of the King and a good Parliaments, and of our greatest Judicatura a grav yet told us not to be so certain, as that the brisk naticks are Traitors in their hearts; thought Natio own no principles, as the Papists do, that it rant Treasonable practices. And these Man naries, as frankly as if they had for the ding of the Nation a Warrant fo to do, all Fanaticks that oppose Popery, defire Pull ments, and expect they should use that poor that is lodged in them, to keep out Poper, and preserve our Government, and to bringing punishment those wicked men that have notoriously designed to destroy it. The belief of the Popish Plot, in the mean time, is by scoffs and paltry Rhimes permitted publickly to be fung in the Streets, put out of Counts nance, and those that believe it exposed as a lottel credulous Fools, or defigning Knaves.

Such a vile esteem the Papists now have us, that they profecute us with their fcom and use us as if we were below their hat They think our divisions, which they have made, have already destroyed us; and they now hire a fort of Scaramouchy Zaneys, Merry In drews and Jack-Puddings to infult over us, and

make sport at our miseries.

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These pleasant Knaves cry with one side of the Face, and laugh with the other; but in the mean time they cry in jest, but laugh in good earnest. He that had the art of imitating a grave Spaniard with one side of his body, and a brisk *French*-man on the other side, rendred both Nations ridiculous.

These vain fellows deprave every thing they meddle with; and whatever they say of Church or State, Religion or Policy, is raillery and abuse,

and Pamphleting scurrility.

Lord, under what feeming fatality do we labor, that it can be thought to the Service of the Church

or State, to employ fuch Knaves!

We are used like Samson, bound, and our Eyes put out, and made sport for the Philistims. By these py'd Pipers, our young men are seduced, and danc'd down a precipice; though these merry Knaves have not skill enough to commend them for Rat-catchers, if our City should be insested with that vermin, as they say the Town of Hammel once was. But the Dæmon that appeared there a py'd Piper, who destroy'd their Children as well as their Rats, was not more mischievous to that Town, than these motley Knaves are to the Kingdom and Nation.

It is an insufferable indignity, That the tragical State of our Nation should become almost daily the matter of a Rascally Farce; the very anguish and groans of the Nation turnIt is since the Popish Plot was discovered that Fanaticism is represented more into the rable than Popery: That the Popish Plot, the dent to the satsifaction of the King and in good Parliaments, and of our greatest Judicaturs, a g yet told us not to be so certain, as that the bri naticks are Traitors in their hearts; though Na own no principles, as the Papists do, that it. rant Treasonable practices. And these Man naries, as frankly as if they had for the ding of the Nation a Warrant so to do, all Fanaticks that oppose Popery, desire ments, and expect they should use that pore that is lodged in them, to keep out Poper, and preserve our Government, and to bring to punishment those wicked men that have no toriously designed to destroy it. The belief of the Popish Plot, in the mean time, is by scoffs and paltry Rhimes permitted publick ly to be fung in the Streets, put out of Counte nance, and those that believe it exposed as a sort credulous Fools, or defigning Knaves.

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ed into Laughter and Mockery, such a barbar hat was never used to a Nation.

It is an excess of Petulancy, to make able mifery in the very form of it, mimically re fented matter of Mirth and Laughter.

These men were born out of time, were fit for no Age but that of Nero, of the cati confort they should have been, when he's ed the Destruction of Troy, to the Burning Rome. But I do not doubt but His Marin Justice will e're long overtake these Income ries, that are so pleasant at the embroilment his Kingdom, when it shall be duly represented him what beautefeus they are, and unmerch deriders of the Calamities of his People, with they occasion or promote. Tho they think they may pass any thing of this kind upon the Nation, made vain with trifling false wit and Bustonery,

It is now Twenty years fince our Nation was infected with this fort of wit, and now we are to dye of the disease. We have a Fiddle proving for us that have been bit with this venemon Tarantula, to dance and frisk us to our destruction not to our cure; and yet we pay the Fidler.

This thing Wit, the greatest debauchment this Age, hath depraved not only the manners with the Judgment and understanding of the Natur too. It hath been accounted the best accompliment of men in place, the best part of the Learning of this last Age: It is not the real of the Leviathan, so much as the vanity of W. that

hat hath propagated Atheism, and corrupted our Manners. This hath made our Judgments inincere and trifling; our determinate resolutions in matters of the greatest moment, slight and Phantastical; introduc't idleness and neglect of folid Learning, which requires labour and appli-

There is a fort of Wit very commendable, which Tully calls celeritas in verbis, and the Greek Epigram, in Sints maigners is a pleasant entertainment. and a commendable refreshment, where our minds are tired with anxious and graver bufiness, and the troubles and cares of humane life; but this ought to observe its times, its proper subjects; it ought to be confined to Table-talk, an evening-compotation, and the hours of mirth, and the relaxation of our mind: It may be used decently in a Comical Farce; but it is not allowable in Satyr, most undecent is the use of it in Tragedy. But yet it hath infolently interposed in our Politicks, governed publick Councels, fometimes determined debates in Parliament; hath made our Pulpits contemptible, our Theology trifling: It is admitted to resolve the greatest Questions, and determine Cases of Conscience, to establish and refix Church-Government; hath usurped an authority to alter and pull down Governments, and

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to render them tottering, when they are as

ly establisht and fixt as a Rock.

That Wit that is abhorred by all ment are wife and honest, is that versatile shi squinting, distorting of the Understand that it views nothing truly, and repres things not according to their true natus, by under false Fantastical Schemes, which affix to them, to abuse the judgments of other a man can never arrive to any perfection in of faculty, until he is become false, and lot truth and modesty: none but weak man the entertained with it, and such who do not the lo to understand truth, but to serve a turn, and he to be deceived, and who deceive themselves in the It is in perfection in old Knaves, it and admired by young Coxcombs. It is the my Hypocrific of the Tongue, a plaufible mode of fi lying and slandering; and at best, but a pleaset Knavery.

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It will render ridiculous or culpable, by the I representations, the most noble and heroids ctions, and put false colours upon most detestate Villanies. It can discredit a man by honoung b him, and make a thing incredible by the ver mode of believing it; making a man ridiculous it concludes him at the same time unworth; and to confute the most avowed Truths, the needs no more than to raise a fit of laughter p on it; which has the same effect with the m of Wit, and their vain admirers, as reducing

alse proposition to an absurdity: Thus the reaon of this Age is governed by our rifibility. The Popish Writers have thus tickled us with their Wit, that we are ready to dye and perish laughing, ind we know not, nor care to consider or judge of what does truly concern our preservation. And by improving the vanity of some youngsters, they have drawn them to question the Truth of f other the Popish Plot; and some can believe every hour of the day, when they meet with a merry Popish Pamphlet, that there is a Protestant Plot on foot; though they believe it, I am fure, not much longer than they are reading it.

I will not grudge my pains in furnishing a short Demonstration of the Popish Plot, since it is of such importance to the saving of these men and the whole Nation, which possibly may de of fix their minds (notwithstanding so vain they be) into a belief of it; which I have made short, that it may be the better remembred; which I do in kindness to them, fince it was lately (and may be so again shortly) a criminal matter to bring the truth of it into question; and they are by all honest men reckoned as Plotters them-

selves who doubt it.

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The Plot has been declared by the Kings Proclamation, and four Parliaments, one of them confisting of Pensioners and Dependents on the Court, which for eighteen years together, were giving Demonstrations of their Loyalty to their Prince, almost forgetting the publick

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Weal: A folemn National Fast has been led by the Civil and Ecclefiastical Authority Kingdom, for averting the mischiefs there figned, and folemnly Celebrated by the Nation, in which, certainly, they did not

God, and deride his Providence.

of . Many unparallel'd Villanies have been ted, for the stifling, concealing, and suppress discovery of it, which (however wicked theh cal Sect of base, false and degenerate Christian ing we cannot without breach of Charity to kil them, think they would commit cheaply, and out cause, and to no purpose. They have no his dered a Minister of Justice, because held knowledge of it, and left nothing undone th they thought necessary to Assassare another of strenuously opposing it. They have attempte of upon the Lives of our Witnesses. By perun Pr and forgeries they have endeavoured to darg them with the most infamous crimes, to delive all them in their Lives and Reputations to, in all form of Justice. They have attempted by form of Justice. They have attempted by B and rewards upon the integrity of all Witnesses, to draw them to retract their flimony against the Plot; for which someon li Agents have been judicially censured; One to tleman to the Pillory, Find 1000 l. and a demned to a years imprisonment: so evideran notorious was his offence, and by the low thought so being the land of the low thought so being the land of the low the low the low the low the land of the land thought so heinous, that it provoked to passion of the Court, and they seemed to

xceed the ordinary Rules of Julice, for that hey judged the Case to be of an exorbitant and

ranscendent nature.

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The Plot of the Meal-Tub is a sublimated piece of wickedness, the last accomplishment of villany; it hath out-done all former, and will never be out-done in after-Ages. The Papists by the Discovery of the first Plot became less hopeful in a Massacre, and of effecting their purpose by force: They dare not now kill the King, for that the World would not how believe it to be done by Mr. Claypole and his feigned accomplices; which must have born the blame from the Papifts, and he and they long fince Executed as Traitors; if that part prevented by being detected. 10 21251 of the Plot against the Kings Life had not been

I say, the first design of the Plot being rendered less feasible by the discovery; They keep the King alive with care, as well for their avoiding the rage of the Nation, as to lessen the credit of the Plot: But contrive to destroy as many as they thought fit to be Massacred, in form of a legal process, and to charge them with a defign of raifing Rebellion against the King. They had made a List of a great number of considerable persons, whom they intended to charge, principal Nobles and worthy Gentlemen about the Town; had preand would certainly with more ease, after the first Conviction and Execution, have fworn all that

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they had a mind to destroy into the same a And thus all the truly Religious, the No Good and Virtuous of our Nation, that courage enough to own, affert and defend true Christianity, and our Government, m the eternal dishonour of our Nation and Res have suffered the execrable death of Train

We have reason to think them have s 1 Go when they only defigned a Gun-powder In the or a Massacre. Our abhorrence of this dischargeth in us all reluctancy to Martyron the Let them bring us to the Stake as Mann the then we shall bear our Testimony to the m of the best Religion, and our Lives will mb cheaply lost; but by this means we mult CO forced to dishonour this Religion by our deaths By a Massacre or a Gun-powder Plot, the vile ness, cruelty and treachery of that Apollat Church, had been declared to all the World and that false Religion, as well as the profeso of it, had been rendered detestable, for whi end a good man would scarce refuse to the But by this means they would have forced to personate their own proper Crimes and lanies, and dishonour our own peaceable and ly Religion. A man of Honour prefers hish nour to his Life, and would redeem it by h Death: But by this means we were, though innocent, to lose our Lives by dishonour, and fasten a stain upon our Memories by our deth The Priests, their impudent Lyes at their daths

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ne in denying the matters of the Plot, of which hey were upon clear evidence Convicted and entenced, must have past for truths; and all fend our worthy men dying with protestations of me heir innocence, must to the everlasting infamy of our Religion and Nation, been accountno reason to be assign'd of the patience of In God or Man towards fuch miscreants, but that they may have time to add one impiety to another, until an easie vengeance triumphs over them.

And though this last mentioned Plot is cleared beyond all exception, their Faces are hardned, and they are not yet ashamed; but they have since contrived and suborned Witnesses to swear the very Discovery of the first Plot to be a false contrivance of a Plot against the Papists. To this purpose they suborned a Son by perjury to commit parricide against his Father; this the greatest Sin against Earth, the other the greatest affront against Heaven. What a Religion is this, that must be thus supported!

Nay, as if they did not fear or care to loose the favour of their most indulgent Prince, which they have possest fince he used Papists in making his escape at Worcester; they have contrived these two last Plots with such Art, as to bring them under his Majesties Observation, and represented them as things fit for his encouragement. Sure if they were not urged

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with the fears of a real guilt, and a restless of science of the Plot, they would never have ventured thus to have interested the honor the King, and to tempt him to abandon to the publick Justice of the Nation; who begins to grow impatient, by the delaysom gainst this Hellish Plot.

For we have had four Parliaments dissolveing the Discovery of it, one a darling to the Com The bringing into question the Dissolution of the Parliament in the House of Peers, upon therein of an unnatural Prorogation, was not long below censured, and some great Lords imprisoned the fore; proceedings to unwarrantable, that it was after thought fit by that House to oblitent the Memory of them; so necessary was the Parliament then thought to the fervice of the The Dissolution of that Parliament. gave us reason to fear that the King hadnomore business for Parliaments. By these Dissolutions no publick ends that are intelligible are ferved, no Interest but that of the Plot is gratified; n persons of any sort receive their satisfaction but the Plotters, who are respited thereby from pu lick Justice, and gain time to bring their Pa to effect.

This is the end the Papists have served; but the King, our great Physician of State, hadane ther reason that hath governed him, for he knew the strength of the Plot, our Disease, and that a Disease that is dangerous, is sometimes

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to be palliated, until the feason comes to make a thorow Cure; for it many times kills the Patient to precipitate the Crisis. All these Demonstrations of the Plot are past under every mans observation.

But that we know so little of it after all this time: It is now above three years fince the first discovery. That the Plotters now ordinarily escape Justice. That a great Judge did abate his first Zeal in punishing the Plot, lest he should exasperate it, and Reason of State might thus require it. These things prove the greatness and strength of the Plot, as well as the reality of it; these declare the Plotters interest is great, that the Plot is you unbroken, stanch and hopeful.

Therefore we are not to believe our felves well, and live fine Regimine, as the Physicians say, but to

expect, address to, and desire our Cure.

That the Papists think it yet hopeful, evident from the Priests and the Lawyer abjuring their guilt with their last breath. had the honest Confessions of the Convicted Priests and other Traitors of the Popish Treafons of which they stood Convicted, in the time of Queen Elizabeth; and in the time of King James, of the Gun-powder Treason. What then could induce our Plotters Convict, to utter most solemn Perjuries the next minute before they were to appear to God? nothing fure but that they then hoped that the Plot might be

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be executed; they did it for the interest and ncu vice of their Church, and for the better bring hei that Plot to effect for which they dyed; n t for which at their deaths, to conceal, they red ventured Heroically upon lyes and perjulous which if confessed, would have been fruit man and become Abortive: For it must not be selved. lieved that even that Church is fo degenerate to f to permit and allow men to fuch impietie, the the punctilio's of honor, though of the Chi ship it self. But while they are not done for ver fake of him that commits them, but for ain for portant interest of their Church, (such at and carrying on of this Plot) they say they looken on nature by the direction of the intention, to VE become a pure pure of mortification and the denyal, an adventure to trust God in whither m do for his sake, and for his service; and their B Casuists will no more call them in this Case Iyes or perjuries, than Abraham's offering up his Son Isaac (though that was at Gods express command) was murder. But the God of Truth that God who hath declared, that when he has felf in any entercourse with Mankind interpola an Oath, that the matter under that Oath is revocable, peremptory and absolute, cannot le cense or dispense with perjurious salshoods for ny end whatfoever.

But I must remark one thing more, and the is, touching the credit of Dr. Titus Oats, and Capt. William Bedloe, viz. That they have been

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bring heir own natural course, allowed themselves ed; in their passions, have been apert and unreserthey ved, have not cared who they offended, have ought no mans favour, seem to care for no mans opinion, have valued and supported themthe selves onely by their veracity, and have seemed to set all the world at defiance to find a flaw in their evidence, and have had little of friend-ship or esteem, but for the sake of their discofor very. Besides that so long a time hath not afforded a possibility, by all the Artifice, Interest and unhallowed frauds of Rome, to falfify any one part of that evidence. But numberless events have given credit and authentickness to their Testimony. Did ever any seigned Testimony bear it self up with so much Considence, Bravery and Assurance? was there ever any false witness that did not endeavour to render himself acceptable, to bespeak favour, which draws after it credit, and to appear of the most unexceptionable behaviour? Their faults and imprudences, fuch as they have been, we would not have wanted, to make their evidence beyond all exception.

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The undoubted truth of their evidence alone, hath given them the civil respect of all honest men, and will give the Doctor the publick hcnours of the Nation in due time. I will not recite the innumerable Sham-plots contrived against the Protestants, every one of them a De-

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monstration by it self of the truth of the Pother Plot, because I have no design to exasperate, but awaken these men that are asleep and seem of t this storm.

This trouble of demonstrating of the may feem unnecessary to the judicious, or the plain fort of honest, upright, and welling men; and so it would certainly have had not some young Gentlemen, by this thing called Wit, been corrupted in their ments, and brought into a Scepticism, and undetermination in a matter of fo great com ment.

This despicable faculty hath made a fam Gentleman, who hath a liberal Dofe of its Writer of Books, caused him to waste so much Paper, and abuse so many Readers; but in all that I have read of him, there is nothing true and fincere, or truly and fincerely his his Judgment is made false by his Phantase, or h hath ferv'd a turn by his Versatile winding That dangerous facult and Wily conceits. that he indulgeth, hath imposed upon in which the severe and honest enquirers truth are concerned to mortify and supr And I do earnestly recommend to all ingenion Gentlemen, that would be rightly instructed an informed, neither deceive others, nor wild be deceived themselves, as they love trutan virtue, wisdom and sober thoughts, todeste this fort of wit in others, and repressin themate,

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hemselves. And never allow it to be used, but in the hours of mirth, in the Relaxations of their minds from serious Contemplations and matters grave and weighty, where this prophane thing Wit ought always to be shut out with care.

Enough hath been faid for rectifying the mistakes of any true Protestant, especially any Clergy-man of the Church of England, which you have objected against them about our Go-vernment or Parliament, Dissenters from the Church of England and Popery. Especially, when it is made apparent that these mistakes are made serviceable to the Popish Pla, and the means which the Popish party prosecute to compass and bring about the ruine of our Church. But that nothing may be wanting, that lies in my poor power, for pulling their Foot out of the Snare, I shall more distinctly consider them.

First, I shall desire them to consider what our Government is, and where the true knowledge of it is to be found. And where can it be found, but in our Statute-Books, the Commentaries of our Law, the Histories of our Government, and of the Kingdom. ? Search them if you be at leisure; if you are not, consult those that have read them, and whose business and employment it is to understand them, and you cannot fail to be informed.

That the King hath no power to make Laws,

that both Houses of Parliament must joyng

the King in making a Law.

It can with no more reason be concluded to the King hath the Legislative Power, because Assent makes the Bills in Parliament Laws, to it can, because the third Unit added to two man a Triad, that the other two do not go to the king of that number.

When a matter's moved from the King inh. liament to pass into a Law, the Commons common c

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Sir E. Cook for making the Eldest Son of a line 8. R. in Succession Prince of Wales at

Duke of Cornwal, was confirmed they must have been, otherwise they would have been void by the House of Commons.

And yet we will not say, that the Houle of Commons can make a Prince of Wales or Duke of Cornwal. And yet upon no better reasonthan this, some men will talk as if they believed themselves, that the Legislative power is in the king when no King of England yet ever pretended it; but by their process of Law have punish such officious and mischievous Knaves.

They also will tell you that, the Laws are the measures of our Allegiance, and the Kings Progative, and declare the terms of Obedience and

Government.

That a Legislative authority is necessary to every Government, and therefore we ought not to want it; and therefore Parliaments, in which

which our Government hath placed the making of Laws, cannot be long discontinued, nor their Conventions rendred illusory and in vain, which is all one as to want them.

That to Govern by Laws, implieth that great fundamental Law, that new Laws shall be made upon new emergencies, and for avoiding unsuffe-

rable mischiefs to the State.

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By the Statutes of 4 Ed. 3. c. 14. 36 Ed. 3. c. 10. it is provided that Parliaments be holden once every year. The Statute of this King required a Parliament every three years; which being an affirmatory Law, doth not derogate from those of Ed. the 3. But if the King doth not call a Parliament once in a year, he neglects these Laws; and if he delays calling a Parliament three years, he neglects the other Law of his own time too. And for that he is by the Law intrusted with the calling of Parliaments, he is at liberty to call them within the times appointed.

And that Laws ought to be made for Redress of mischies that may ensue, appears by the Statute of provisors, 25 E. 3. cap. 23. In which we have

these words:

Alhereupon the Commons have praved our said Soveraign Lord the King, that sith the right of the Crown of England, and the Law of the said Realm is such that upon the mischiefs a Dammage which happeneth to this Realm, he ought and is bound of the Accord of his said People in his Parliament thereof, to make Remedy and Law in aboiding the mischief and damage, which whereof cometh:

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which that King agreed to by his Royal At

I dare be bold to fay, that never any Billing liament was lost, and wanted the Royal Assemble was promoted by the general desires of the part of the p

If Popery therefore (which is the greated chief that ever threatned this Kingdom) the kept out by a Law, we ought to have he Law; and nothing can hinder such a Law past for that purpose, but want of an universe desire to have it. I desire these Gentlement consider, how they will answer it to our same at the last day, if they suffer his true Relieve and the professors of it, to be destroyed and refecuted, when nothing but their desires of a many lawful to be had, and of right due, was require to prevent it. Their sufferings will be just and righteous from God, if their sin occasionathis, and very uncomfortable to themselves.

The extent of the Legislative Authority, in where to be understood, but by our Acts of the liament, in which it hath been exercised and and by such Acts that declare the extent of power. By the 13 Eliz.cap. 1. it is made Trade during that Queens Life, and forfeiture of God and Chattels afterwards, To hold, maintain affirm, that the Queen by the Authority and Parliament of England, is not able to make the and Statutes of sufficient force and libity, to simil and bind the Crown of Macalin, and the Descent similation, in Realm, and the Descent similation, in the sealm, and the sealm, and the sealm.

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And this authority was exercised by Entailing the Crown in Parliament in the times of Richard the 2d, Henry the 4th, Henry the 6th, Edward the 4th, Richard the 3d, Henry the 7th, thrice in the time of Henry the 8th. and upon the Marriage of Queen Mary to King Philip of Spain, both the Crowns of England and Spain were Entailed, whereby it was provided, that of the several Children to be begotten upon the Queen, one was to have the Crown of England, another Spain, another the Low-Countries. The Articles of Marriage to this purpose were confirmed by Act of Parliament.

Those that are truly Loyal to our present Soveraign, have reason to recognize with high fatisfaction, that such a power of altering and limiting the descent of the Crown, is duly lodged in the King and States of the Realm: For under the Authority of an Act of Parliament of the Kingdom of Scotland, we derive our felves to the happiness of his Government, and He his Title to the Crown of Scotland, which drew to him the Imperial Crown of England. For Robert Stewart, first King of Scotland of that Family, lived in concubinate with Elizabeth Mure, and by her had three Sons, John, Robert, and Alexander; afterwards he Married Eufame, Daughter to the Earl of Ross, and after was Crowned King of Scotland : . He had by her Walter Earl of Athol, and David Earl of Straherne. When Eufame his Wife died, he Married Eliza-

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beth Mure. After that by one Act of Parliant inc he made his natural Children first Noble, thatis in fay, John Earl of Carrick, Robert Earl of Menter and Alexander Earl of Buchquhane. And shortly ter, by another Parliament, he limited the Cron in Tail Successively, to John, Robert and Alexander der his Children by Elizabeth Mure in Concibi. nate, and after to the Children of Eufame Rolling Legitimate Children; who are to this day in the Iffue by this limitation, by authority of an All of Parliament in Scotland, barr'd from the Crown and we hope ever will be, by the continuence of the Line of our most Gracious King.

Note, that though a subsequent Marriagely the Civil Law, which is the Law of Scotland, in fuch cases, doth Legitimate the Children born before Marriage of a Concubine; yet it is with this exception, that they shall not be Legitimated to the prejudice of Children born afterward in Matriage, and before the Marriage of the Concubint Besides, the reason of the Civil Law in Legimating the Children upon a subsequent Mariage, is this, viz. a presumption that they was begotten affectu maritali; which presumption fails, where the man proceeds to Marry anothe woman, and abandons or neglects his Concubine.

But I desire these Gentlemen that are so me willing to be fafe in their Religion, which lb lieve is most dear unto them.

That if any Law should exceed the declared

and measures of the Legislative Authority, though in such case they may have leave to doubt of the lawfulness of such a Law, yet if it be not against any express Law of God, they will up on a little confideration determine it lawful, if dexa it be necessary to the Commonweal; for that nothing can be the concerns of men united in any Polity, but may be governed and ordered by the Laws of their Legislature for publick good: for by the reason of all political societies, there is a submission made of all Rights, especially of the common rights of that Commus nity, to the government of its own Laws.

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But all this, and a hundred times as much, will not fatisfie some Gentlemen of the lawfulness of our Government, and the extent of the Legislative power of Parliaments, fince they have entertained a Notion, that Monarchy is jure divino, unalterable in its defcent by any Law of man, for that it is subject to none. That all Kings are alike abfolute. That their Will is a Law to all their Subjects. That Parliaments and the States of the Realm in their Conventions, can be no more than the Monarchs Ministers, acting under and by his appointment, which he may exauctorate and turn out of office when he pleafeth: For there can be (fay they) under the Sun no obhiging Authority but that of Kings (to whom God hath given a plenitude of power) and what is derived from them. That this divine absoluteness may govern, and exercise Royal Power immensely

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mensely, and that it is not subject to, north abated or restrained by any humane inventor or contrivances of men: (however necess and convenient Kings have thought them former Ages) by fuch methods and fuch Of and Officers (of which number the States of Realm may be, or not be, as Kings shall plat as they shall by their absolute Will order on point. Our Parliaments, say they, are Rebellin and an Usurpation upon the unbounded power Kings, which belongs to every King as such, June dinario, and by Divine institution: That min Monarchy, as ours is, is an Anarchy; and than are at present without, a Government, at has in as we ought to have, and which God hathappoint and ordained for us: That we by adhering tothe present Government, are Rebels to God Almighty, and the Kings unlimited Power and Authority under him, which no humane Constitution, no not the Will and Pleasure of Kings themselve can limit or restrain, for that, jura ordina & divina non recipiunt modum: That the l gislative Power is solely in the King, and in the business of a Parliament (if they would the of being onely what they ought to be) is onely to clare on the behalf of themselves and the Per (that send them for that purpose certainly) it obedience that is due from them to such Laws with King shall make, and that they may be laid afide work ly when he pleaseth. And after all this, what matter's it with them what we fay our for vernment vernment is, hath been, or where the Legislative Authority of the Nation is placed, or how used?

But I desire these Gentlemen to consider how they come to these Notions, upon what reason they are grounded. How a Government established by God and Nature for all Mankind, should remain a secret to all the wise, good, just, and peaceable men of all Ages. That Kings should not before this have understood their Authority, when no pretences are omitted for increase of Power and enlargement of Empire. I desire them to consider that this secret was not discovered to the World before the last Age, and was a forerunner of our late unnatural War; and is now again revived by the republishing of Sir Robert Filmer's Books, fince the Discovery of the Popish Plot.

I wish they would consider, that the reasons ought to be as clear and evident as Demonstration, that will warrant them to discost from the sense of all Mankind in a matter of such weight

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That to mistake with confidence and overweening in this matter, will be an unpardonable affront to the common sense of Mankind, and the greatest Violation of the Laws of modesty. I desire that they would consider, and rate the mischiefs that will certainly ensue upon this opinion, and whether a probable reason can therefore support it.

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That they would throughly weigh, pone and examine the reasons of these bold and a Dogmata. For their enquiries ought to be proportion diligent and strict, as the matter of moment; and if they are not, their emand mistake will be very culpable, and sin of the errour aggravated to the measure at the mischief which it produceth and occurred.

Where is the Charter of Kings from a Almighty to be read or found? For nothing in the declared Will of God can warrant who destroy our Government, or to give up the Rights and Liberties of our people. If they are lawful, I am sure it is villany to be them, since all political Societies are framed that all may affish the common Rights of all I cannot imagine they can pretend an unbrage from the holy Scriptures for such unbrade Opinions.

The Jews indeed had a Government, and Laws of Gods framing and appointment, and King of their own chusing; and such a king they desired, by Gods permission they had: It their form of Government ought with less to so to be the rule of all kingly Governous, and cause it was a Government chosen by themselves then the Laws of the Jews ought to be the loss of all Nations (which they are not) the mode and one shadow Coal birefully

made and enacted by God himself.

Christ would not make himself a Judge in private

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private Right submitted to him: He determined the right of the Roman Empire by the posfession of Soveraign Authority; and such as the whole world had made it; his Disciples were obliged to acknowledge it, by their obedience and submissions, which is the sum of the Apostles Doctrine in this matter.

The Christian Religion instituted no form of Governments, but enjoyns us to be obedient to those we have, not onely by express command in the case, but by its general Rules of a most re-

fined, improved, and extensive morality.

But though I said the Scriptures have not prescribed or directed any universal Form of Government, yet the Scripture hath declared the falshood of this new Hypothesis of Kingly Government to be Jure Divino, or by Divine Right: For St. Peter, 1 Peter 2. 13 and 14, stiles Kings, as well as the Governours under him, the ordinance of man, which cannot have any other sence, but that men make them, and give them their powers. By St. Paul the power of Government indeed is called Gods Ordinance, Romans 13. 2. but that is for this reason, because in general God approves of Governments as necessary to the well-being of Mankind, for the improvement of humane nature, for the punishing of Vice, encouragement and fecurity of Virtue; without them it being impossible to live honestly and in peace. And he bath made them the under-Ministers of his providence

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vidence and care over Mankind, and expets them, that they should promote his true Hom beco and worship in the world, which will be alw accompanied with the exercise of all civil tues.

These two different places must be so und stood, that they may be both true; and by ther interpretation can they be reconciled

made consistent.

It is impossible that any thing can be of m appointment, which is of Gods Ordination; the can be no fuch thing as a Co-legislative por of Men with their Maker. Government the fore is from God, as he hath made Government necessary in the general order of things; but specification thereof is from men. The best de. finition that can be made of Government, is in the words of both the Apostles put together, so a arting, 'Avgagation writers, and fuch Governments which inen make, God approves, and requires out the dience to them, upon all those reasons which make Governments necessary.

The natural and easie consequence and fult of these Scriptures, is this; which I dem those Gentlemen to observe: That whatsome is not lawfully established by men, no Lawd God, not the Christian Law, doth obligeus

obey.

The Christian Religion doth equally 11 demn, in the reason of its Institutions, Ulm tion, and Contumacy. Where the Aposle peds

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monisheth us, that if we be free, we should not become Servants, he hath by virture of that Admonition, made it commendable not to suffer the encroachments of Power over us. Most certainly therefore, as the Christian Religion doth not prejudice the Soveraign Rights of Princes, fuch as they are in the feveral Forms and Models of Monarchical Governments, non eripit terrestria, qui regna dat cælestia, as Sedulius; fo doth it not enlarge them: when by the Gofpel God made us free from his own positive Laws to the Jews, Sure he did not intend thereby, de Jure, to render us Slaves to the Arbitrary pleafure of men.

No man intends by any thing in the Scripture, that all Mankind is obliged to any one Form of Government, and therefore all men are left to their own. It hath not therefore altered the terms of Government and Obcdience that every Nation hath established for themselves, but hath confirmed, and strictly obliged the obfervance of them.

To Obedience to Government, we are obliged by as many ties as there are Christian Virtues; and he must disown his Christianity, that departs from his due Allegiance. And fince our Saviour is declared King of Kings, and Lord of Lords, all Christian Kings are to govern in imitation of his mercy and goodness, and in subferviency to the interest of his Religion and Kingdom.

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Regum timendorum in proprios greges, Reges in ipsos imperium est fouis, cuncta supercilio moventis.

Whence then is this absolute Authorin profe Kings, if it come neither from God nor man thed

Give me leave now to inform you, that Schi opinions render you all Traytors, guilty of ter, fon of State, perduellionis rei, obnoxious bog punished as Traitors by an Authority logic rem Parliament, in the Constitution of the Gore and ment.

You your felves must needs condemny her felves to have forfeited all your own, who to fuch Principles that tend to destroy every the Right, by resolving all things into the about pleasure of a Monarch; in which you mostly di ferve the King, and are contrary to his Majesties late Declaration. The men of the Principles, the less of the Government they are intrusted with, the better; for the less they have to give up and betray. I confess, if I could be lieve that this Doctrine was become Orthon among them, and the prevailing opinion of Clergie, I should conclude us to be the most happy people under the Sun. This is an H pothesis indeed, that will bring on new Hearn and a new Earth; but such wherein no Peace But I deemal Righteousness can ever dwell. such as are Defenders and Promoters of ide deserve a civil Excommunication, more smini than their Ecclesiastical; and to be condemia

b live upon, and onely feed themselves with their thin and crude Speculations. To be excluded from any share of that Government that they orin professedly in their Principles betray. To be puni-Thed as feditious persons, and most mischievous Schismaticks, far more intolerable in this matof ter, than the scrupulous Brotherhood, for their boglings at an indifferent and infignificant Ceremony. For that to the ruine of our Religion, and destruction of the publick Peace, they divide from that polity, to which by drawing here their first breath, they made Faith; and to which the condition of their birth doth oblige them; they falsifie that which Arrian in his Epi-Etetus calls the Enameria arogeoms, than which nothing is more facred and inviolable.

By creating themselves a new Allegiance, and obtruding it upon their fellow Citizens, and Members of the same Kingdom, they set up a Kingdom within a Kingdom, more dangerous and mischievous than the Papal Imperium in Imperio; which certainly will be introduced, if this Modern and monstrously-extravagant opinion can

prevail by a general Credence.

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It is criminal, and no less dangerous to the being of any Polity, to restrain the Legislative Authority, and to entertain Principles that disable it to provide remedy against the greatest mischiefs that can happen to any Community. No Government can support it self without an unlimited power, in providing for the happiness happiness of the people: No Civil establishmetter but is controlable and alterable to the publishmetter weal. Whatever is not of divine Institution, or rates to yield and submit to this power and Author the ty.

The Succession to the Crown is of a civil he ha ture, not established by any Divine Right & ions ral Kingdoms have several Laws of Success If some are Elective, others Hereditary, under the paral Limitations. All humane Constitutions at its made cum sensu humanæ imbecillitatis, under tity fonable exceptions of unforeseen accidents and emergencies that may happen in humane after tinuand so they must be intended, and so interpret con The several limitations of the descent of its e Crown, must be made by the people in conte peo ring the Royal Dignity and Power, which is more Crown less in several Kingdoms. And the descent of Pointhe Crown in particular cases, is governed according. ding to the presumed will of the People; and No the presumption of the Peoples will, is made be measuring and considering what is most experient to the publick good; whereas private Eliza R are directed in their descent according to them fumed will of the Decedents. And this is to reason that the descent of the Crown is governous to the Crown is gove ned by other rules than private Estates. One one Daughter, and not all, as in private Ellas, thall succeed to the Crown, because the strugth of the Kingdom and the Strugth of the of the Kingdom is preserved when continued in nited, and the peace and concord of the peace hetler

illimetter established. A son of the second venter pull all inherit, which is not allowed in private Enot ates; because a son of the second venter is equally attended to the great Ancestor, upon whom the Crown was first conferred by the people, or after in he had got into the Throne obtain'd their Submissions, and may equally participate of his virtues.

If the Royal Family be extinct, it belongs to the people to make a new King, under what limiour rations they please, or to make none; for the Poand consequently, in case of this cesser or discontinuance of the Regnum, there may be Treason committed against the people. By all which it is evident, that the Succession to the Crown is the peoples right: And though the Succession to the nor Crown is Hereditary, because the people so appointed it, would have it so, or consented to have or it so; yet in a particular case, for the saving the and Nation, the whole Line, and Monarchy itself may be altered, by the unlimited power of the Legislative Authority. We have been more just to the Royal Succession, than the wonderful Sir Robert Filmer; for his Hypotheses will not allow at all of Hereditary rightful Succession: For he, establishing the right of the universal Empire of the World in Adams right Heir, fince this Illuminato hath enlightned the world in this fecret, no tans, ength ed u Successor can, according to his Doctrine, derive any hereditary right from his Predecessor. His title can be only his own possession; for no man can etler claim

claim by descent the Usurpation of his farm, but he that is not conscious to the wrong, a liled bonæ sidei possessor, under the presumed right title of his Father. I would be understown speak as the matter can be considered in a reason, not under the prejudice of any phresident as the municipal Law; for to such Laws the whis Crowns, as the renowned Knight will be as the are not submitted.

So that here in this matter their Knight he per them, and can give them no help. There will friend, the great Leviathan-maker, is so far for ining establishing an Hereditary Succession, that ning leaves Kings to be rightfully assaulted, deplat of leaves Kings to be leaves the Kingstong him justly condemned to death; Leviathan, Par of 2. cap. 21. Those (saith he) that have commit printed a capital Crime for which they expeddeath Is have the liberty to defend themselves by Arms, his well as the Innocent. But I mention him only the to render him detestable; for I take his Books are be the dehonestamenta humani generis.

 By I led Christian Loyalty, (viz.) That if any Prince ndertakes to alienate his Kingdom, or to give flow t up into the hands of another Soveraign Pow-nor, or that really acts the Destruction, or the Uni-Powersal Calamity of his people; Grotius thinks that his utmost extremity, the use of a Defence, as a ast refuge, ultimo necessitatis presidio, is not to be condemned, provided the care of the Common Good be preserved. And if this be true, saith he, it not must be upon this ground, that such attempts of ruho ining, de ipso facto, include a disclaiming the governing of these persons as Subjects, and consequently of being their Prince or King. What unreasonable bleness is there then in shutting the Door upon him, and making it fast against him by an Act Par of State, who hath excluded himself by his mit principles and defigns? For the truth of the fact, eath I shall onely refer you to his Secretary Coleman his Letters, wherein he faith, That bis Masters interest, and the King of France his interest, is one and the same, and their design, their glorious design, the same, (viz.) the extirpating the Northern Hethe Jame, (VIZ.) the sking of France hath complied with the design, the cruel Persecution and Exiles of his Protestant Subjects (who at the In time of that Letter were under the security and protection of the Laws of that Kingdom, and the mou faith of that Crown) do declare to the world. And by what secret influences I know not the is made fo great, his Conquests so easie and expedite.

him,

dite, that he is like to do the work himself he with all the sibrary. But if the work must lie upon our by you let no man think with himself that Pop lad not to be introduced here, because the num of H of Papists are sew; for that will not render to the design impracticable, but the execution of on o more cruel and barbarous; a whole Nature ubn on the matter must be corrupted from the ed of the true Religion, or destroy'd. One which arm of an ordinary strength, not refisted, and ther affaffinate a whole Nation.

Let no man betray his Country and Re-left on, by pretending the example of the pain nev and sufferance of the Primitive Christians for nex inte rule

The Reformed Religion hath acquired a civ he right, and the protection of Laws: if weought no gio to lose our Lives, Liberties, and Estates, butwhen civ forfeited by Law, we ought much rather not Ch lose them for the profession of the best Religion Go which by Law is made the publick Nationals to And it is strange that some men it tir fame Religion in profession, can think (that withstanding) it makes no matter what is to men if they be Religious; but if they be not an the least publick injuries and injustice threatment done them may be refisted, vindicated, remaind and by right defended by old Laws, or never fit to be made for that purpose. The Christian Religion was published a

he whole world was Pagan, and therefore it was he ibmitted to fuch usage as the Governments would give it. But when the Christian Faith had by miracles of patience declared it felf to be Heaven, and of a divine Original; according o the Prophesies on that behalf, it took possession of the Empire; Crowns and Scepters became ubmitted to the Cross; The Christians acquied a civil right of Protection and Immunity, which they ought not, they cannot relinquish and abandon, no more than they can destroy themselves, or suffer Violence and Cruelty to destroy the Innocent. Such as thus perish, shall never wear a Martyrs Crown, but perish in the next world for perishing in this. This will be interpretatively Crucifying Christ asresh after is received up into Glory, i. e. after his Reliion is exalted into Dignity, and Honour, and tivil Authority. If the Senate of Rome had been Christians, they would never have given up the Government to a Pagan Augustus, with a power to him and his Successors to make Laws for extirpating the Christian Faith.

What is said of the Christian Religion and is Paganism, holds between the Reformed Religion

and Popery.

If any man is so vain, as to say, that an unalterable course of Succession to the Crown is established amongst us by Divine Right: I say, he is a man sitted to believe Transubstantiation, and the infallibility of the Pope; he is deeply lapsed into

Fanaticism, he dreams when he is awake, and bug Dreams are Dreams of phrensie. There are bed things so false, that they cannot be disproved elv fome things are so evidently true, that they Hed not be proved. This Proposition hathnoon help to ground it self upon, no medium to prove sufp no argument for it which is to be answered; a ferv is there any thing more abfurd than it self, on Good duce it to. But if any shall adde, that this per cerime is the Doctrine of the Reformation, as shall adde the reformation, as the cerime is the description of the Reformation, as the cerime is the description. adventure to tell the people so; they are the most impudent falsaries that ever any Agepte nev ced; when there is scarce a Child but hath he what was done, said, and maintained by Chergie of England in the Case of Mary of are of Scots, a Popish Successor, in the earliest une En wi our Reformation here in England.

Our Age is bloffed with a Clergie renown for Learned and Prudent: By the Providence pr God, and the Piety of our Ancestors, they put so good, though not to be envyed, Revenues no Honours.

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It is scarce possible they should have man ri mong them that can countenance a proposition wickedly impious and sacrilegious. The cannot have row. cannot have new Laws for the preservation of the Religion, but must lose the old at the pleasure. Popish Successor, against not their own into Rights and Liberty of Religion it self. fork is capable of Franchises and Immunities,

ught above all things to be most zealously asserwell bed and defended by her Ministers. Can they themelves with their own hands ever pull down her
level Hedg and destroy her Desensatives, and expose her
fushed helpless to the rage of her implacable Enemies, and
fush suspend all the Legal security she hath for her prefushed for the present of the present of the present of the power to make Laws, one Proclamation may
and the Papal Bulls, so long as that See continues, will
the prover be able to effect.

Next to Religion herself, the Revenues of the by Church challenge their faithful care, for they are at best but Usu-fructuary Trustees of her Endowments for the Succession, which they will wretchedly betray to an Arbitrary Succession, if they do not repress such Opinions that pretend to change the Government into an absolute jure Divinity Monarchy, which will leave nothing jure divino but it self and the Popedom. Kings for their so doing have the authority of Sir Robert Filmer, who affirms in his Treatise called the Power of Kings, Fol. 1. That the Laws, Ordinances, Letters Patents, Priviledges and Grants of Princes have no force but during their Life, if they be not ratified by the expression following, who had a knowledge thereof. This is but the necessary consequence and result from the Doctrine of the absolute power of a Prince:

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for in such Government the Concessions Predecessor can no more oblige the Succession than he can Govern when he is dead; and Successor must be absolute in his time, as Predecessors were in theirs. But in vaining N et spread in the fight of any Bird; thisden of so gross a thread, that it cannot pass with common people, much less upon our Clergy

But I will not diffemble what may be them reason of the seduction of some young good-m

ren Gentlemen of the Clergy.

It is thus they perswade themselves, that if the principles and opinions of the Unlimited Penn Kings had been received, the late Wars had be prevented: Not rightly confidering, that ric fuch opinions had never been broached, or Un an versally rejected, that War could never have enfued; and we should together with peachave ha enjoyed our ancient Government whichou And T cestors transmitted to us, without that microb tr inter-regnum.

I would not be perverfely understood by m man, as if I went about to justify our late he sa This is all I say, that every Government established will continue for ever, if all bi parts of it would unalterably consent to fe ferve it, to which their natural Allegiance and oblige them: And never any Prince ends acred to change the Government, but where K of the people were first willing, or content d

have it fo.

Those false flatterers that go about to remove the boundaries of power, and change the Government, are the greaft enemies to the quiet and happy Reigns of Kings, and the peace and

prosperity of Kingdoms.

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And if they do adventure to call their fellowrith th Subjects by any opprobrious names of difloyalty, because they will not joyn with them in fuch change, they are as abfurdly impious and infolent, as any Prince or State would be, who should challenge another, as free and absolute ith as himself, for his Tributary and Vassal; and traduce him for a troubler of the World, because. he would not Compose the Quarrel, thus injuthat riously fought, with the furrender of his Crown Un and Dignity.

lave I defire these Gentlemen to consider, that the have happiness of a Nation is best supported with An Truth and Justice: This new Doctrine is not true; and wholoever entertains a belief of it, is not onely barely mistaken, but will be led by the by mistake, into the most mischievous, impious, and

facrilegious injustice and treachery,

It is very agreeable to a good man, to emall brace a proposition with an easie belief, that offers the least seeming probability of a security against the miseries of War, by all means to be advided. But this Doctrine of the Divinity of eren Kings, is most dangerous to the Peace of Kingthat it will give bad Princes, which sometime

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hereafter may be Born into the World, (for there have been now and then) power to me their Reigns worse than War, and Plague and mine to boot.

The Panick fear of a change of the Gonment, that this Doctrine occasioned, and Divisions it made among us, was the prince cause of the late War.

It is not without reason, that, together in these new principles, revived since the Dison of the Popish Plot, we have a perpetual disa

noise of Forty one.

Then that fatal War began, which proceed to the destruction of the Prince, and ruind the Church and State: The remembrance it is the principal matter, that stuffs our week Pamphlets; and it is brought into common dilcourse, and grown so trival, that it is mentioned and heard without abhorrence and regret: And what Service this can be to His Majelly I do not understand; much better it were, the the memory of it were utterly extinct and an lished for ever, except onely in the Anniver of that great Prince that fo fell. Then, ly and then onely, is it fit to be remembred, with we are on our Knees to God Almighty, and his presence affecting our selves with some and remorfe, deprecating the like Judgmes, and bewailing the National Sins that ocho ned those: For notwithstanding the Gloris that Great Prince his unhappy death, and the admied (for in

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to admired Devotions of the Gum Basilium, The flory of the Calamities of his people, (all his three andr Kingdoms involved in War during his Reign) and the remembrance of them, will be with some Men not very Loyal, a stain and diminution to the Glories of the Royal Family. Princes, their Calamities are reckoned amongst the abatements of their Honor; and meer miffortunes are difgraces, and have the same influence upon the minds of the common people, as real faults and male administrations.

How then can this tend to the peace of the Nation, or the Honor of the King? what fatisfaction is it to have our almost-healed wounds, thus perpetually rub'd and kept green?

- Quis sua vulnera victus commemorare velit -----

Why should any of our Nation insult over the miseries of his own and neighbour Kingdoms, when he must be the most barbarous villain, and have devested himself of all humanity, that is not deeply empassioned at the remembrance of them? If a Thuanus, or a Philip de Comines were to pass a Judgment of the condition of our late times, upon the consideration of our late Tragedies, and The Preludium's to it in the Reigns of King James and the late King; it would be formed and pronounced

nounced in these words of Tully, upon anoth to proceed on:

Mihi quidem, si proprium & verum noment stri mali quæratur, fatalis quædam calamitati disse videtur, & improvidas hominum mentes, cupavisse, ut nemo mirari debeat humana con divina necessitate esse superata.

But this is not all,

---- Nec Dum finitur Orestes.

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We are affrighted by the weekly Pampho, with the expectation of another Parliaments War; and this is the true reason of the ments of the late War, that we may forgo our Parliaments for sear of another. So it is written in our publick Prints, which are published under permission, as if Parliaments are designed to be rendered hateful, and to be feared as Plagues, Famines, or Inundations of the Sea.

But who is to begin, who designs the War, the Pamphleteers, or those that set the on work, best know: We had never heard any such thing, if the Mercenary writers the Popish Faction had not told us of it, as the do weekly: and hitherto we cannot find a Colour for this affrightful Lye; they are important for to talk of it as if they believed it, at have brought some as weak men, as they are false Knaves, to a belief of it: But to do the no wrong, those may best know what is to the

to pass, who have the power of contriving and de-

Qui pavet vanos metus veros fatetur.

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The vilest Traitors cannot contrive a greater prejudice to the King and his Family, than by advancing such a dismal thing into credit and belief: for fears, though but upon imaginary and false grounds, produce real effects, as well as they are in themselves really afflictive; and that almost equally, if of continuance, to the evils feared. Do these men speak like true Loyalists, that are mentioning perpetually the Calamitous War in the time of our Kings Father, and fright us with another now enfuing; after those Universal, Solemn, and hearty Joys of the whole Nation for his Restauration, after fo many Millions of Money most dutifully issued out of the affections of his people from time to time at His Majesties Royal pleasure, and nothing complain'd of, but that they have not opportunities of issuing ten times more, to the service of His Majesties Glory? Nay, they speak of this ensuing War, as if the Royal Standard was already displayed, and the Rebels had made their Musters; which must certainly affect the Royal Family with the greatest danger.

If there were twenty *Trajans* derived from one stock, that had Reigned in an uninterrupted Succession, Two immediate Successions, that

should have their Reigns successively attent with civil Wars, were enough to efface their or and the glories and merits of such Ancell and base Caitiss, you can no more truly be rule last Parliaments designed upon His Main Gen Crown and Dignity, to make War, and class the Government, than you can believe that single ry Mothers Child of them, before they camp to the last Parliaments, set his House on first burnt his Wife and Children.

mei But these impudent Forgeries against pec House of Commons, are contrived to make nist people afraid of Parliaments; that this new mid of Government in process of time, when we its an enterprising Successor, may take place, that the service of the Popish Religion. For upon ing strength of Dr. B---s performance, who lath ma with great labour found out (which it is hard for the any man acquainted with our English Hillory bel be ignorant of) that our Parliaments werent scenal ways such as now constituted; This belle und change of our Government will never beatthe the The Nation will never be perswaded, di any thing that he hath found out in his diligents in fearch, that the House of Commons is an on pe grown Wen, an unnatural Accrescency to the K vernment, and fit to be cut off, if that which A offered in the Argument to consideration bed je weighed. Neither can the most insolent he codox of Sir Robert Filmers Patriarcha, contribut much to this purpose. But for that I have in I An

Argument too forwardly despised it, considering that many have conceived a savourable opinion of it, that it may be able to deceive but a very sew for the time to come; for the sake of such Gentlemen who have not chosen their side, are glad of the least Colour or dream, of a Shadow, a fingle opinion of any body, it matters not whom, to relieve their modesty in their notorious defections from Truth, Justice and the Government; I shall here consider his Hypothesis, effecially for that it was Re-printed, and is magnified by the Factors for the Popish Plot.

And first, I will draw it out shortly, in all its strength, and make it more argumentative than he hath left it, (for he hath left his willing Readers to find out the Argument, and to make the Conclusion). Adam, saith he, was for the Father of Mankind; that to him as Father, to belonged an Absolute dominion over all his de-Int scendents; that all Men being so born, are born under subjection to such an Authority: This Authority so reserved upon us by God, and the con-dition of our birth, and the manner of coming nits into the World, is to be submitted to, in the person of the present King, who by becoming the King, is for that reason vested with this Absolute. Authority. This power, and the duty of our Subed jection to it, results from our being Born, and This power of Kings is grounded (by him) meerly upon this natural refultance, and not from

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from any positive and express Revelation ann God, for such, neither we, nor he, yet with heard of.

We will now then consider, what there the weight in this fictitious Reason of Governmental in which the World is so lately illuminated ons this Speculator; what force there is in the ravel all Models of Government that min wer med in the World, to confound Kingdom a auth Nations, and to give Warranty to the bing was upon us all the miseries that are designed by der Papists for us; which we are to be prepared now fuffer, with most conscientious patience, ha the comforts and supports of this insolent at ries vain pretence.

I appeal to the Reader of him, whether in abi thus stating his Doctrine, I have not made it nu more Argumentative and concluding to in the purpose than he left it: I will take this we thoo of remonstrating the futility of his his wi thefis,

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By confidering what a Father is, and w his Duty towards, and Power over his @ dren; in which it will be found, that noting of Empire belongs to him as Father; that more belonged to Adam over his Children than did to any of his Children over to own.

That the Authority of Parents over her Children, continues together with Sovering power, and is not at all abated by it; and that canot

annot be the same, because it continues entire et with it.

That there is no footsteps in the Records of the Old Testament, to verifie his Hypothesis; that we could not have wanted some Declarations about it from God, (if true) it being a matter o necessary for us to know, That no claims were made, (that we know of) to any such were made, that authority in the earliest times, when the Right was unprejudiced, and must have been best understood, and could not have been forgotten, as now it is utterly.

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from Besides that it was never used. The first Histories Recorded in the Bible, make every Child of the common Ancestor and independent absolute, and so it would for ever have contithe common Ancestor alike independent and tit nued: And to this day we should have been in the state of Nature, and not United in any Government, and so no King yet in the World, not-withstanding the Paternal Authority. That his Instances of exercifing Soveraign power by the Fathers of Families, are not concluding, and to his purpose.

That admitting Adam had while he lived been Universal Monarch, (yet if there be no other reason and Foundation of Monarchy in the World, but this of Sir Robert Filmer) Adams right heir not being known, (and if he were, might perhaps be an Ideot or Lunatick, fome Cobler or Botcher under a Stall, or mean Person unsit to govern) we can have no right-

ful

ful King in the World: for certain it is, and t Relations, and the duties and Rights the under refult from them: For they are neither thip able to, nor can be exercised or exacted by by, between any persons, but the Relatives care felves: So that this power of Sir R. F. by foundation of reason in the nature of things in Fact never exercised, and is now utterly len to the ground, and all Government with A more puzled, vain, sensless and unlearned love the dox, was never yet offer'd to the World, was thing more mischievous ever received. For the absolute Power of a Prince over his Subin is not at all connatural to the dutiful Care in Father over his Children.

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It was the good pleasure of God that this part of the immense world should be planted with men endowed with a Capacity to admir his Power, Wisdom, and Goodness, and therefore render him praise and worship: he designed we should be happy in our own enjoyment and promote the happiness of each other; w is not to be performed, but by a mind feet beneficent, and Loving. He provided the disseminations of Love should run part and be under a like necessity with the progation of our kind. For the planting Lord our Nature, he instituted Marriage for Protect tion, that we might owe our Being to the of the greatest and most agreeable friends is and tenderest affection. That for many years we should be educated by a pure, single, and undefigning love of our Parents: and the friendthip of that conjugal State, should be maintained by, and principally exercised in, their common

care of their Issue.

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Every Act of Love of either of the Parents to the Child, being the best instance of love to the other of them; an endearment of a reciprocal love, and a provocation to the like love and care of the Child. And for this love the Children paturally payments. the Children naturally pay a return of an affecti-onate honour to their Parents; and by that honour which we so naturally render our 6001 iniques, our Earthly god, swe are initated, trained up, & instructed devoutly to worship our heavenly Father. God did likewise ordain, and so it was, that all Mankind should derive from one stock, be made of one blood, and every Man every Mans Brother, of the same Family and cognation. By this it was provided by the Father of us all, that we should be born into the World, under the tenderest care for our preservation, and improvement of our Nature; be powerfully enclined to love and beneficence; whereby we may be pleased with our selves, and at Peace and Amity with our whole kind; and disposed to celebrate; the infinite Wisdom and Goodness of our Almighty Creator, with most affectionate Praises.

That the Generations of Mankind might certainly proceed, God planted in our Natures

powerful

powerful and irrefistible instincts to pro the tion, which the Jews call a Precept, the sure this no Precept feem'd necessary, for not crease and multiply they make a Comm Fou But we follow our own propensions, this have no conscience of obedience to a la when we observe and follow them; white so strong, pleasurable, and entertaining, God had not planted a restraint of Modely our Natures, and a sense of decency, we see Ma over-do the business, and degrade our selves in the the dignity of our Natures.

Thus far the Parents are fulfilling Goto pointments, and gratifying their own Natur What from all this can give them a right on their Child? All men coming into the world this way, are no less free, than if they had been form'd in Lucretius his Bottles, and dropt out of his imaginary matrixes, and we were

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In this they are onely executing the appoint ment of God, are but his Instruments to big us into this World, and are all along revit ed and entertained, and careffed by the out of Nature. Adam ow'd this duty to God Father; and fo ordered it was, that he own to himself, and to his own natural propenting pleasures and satisfactions to propagate.

The feveral fucceeding generations of mens soon as they are men, have as much Right wh enjoyment of themselves to the freedoms their own Will, and to live by their own meafures, as Adam himself had. Our Parents do not give us life, but hand it to us from the Fountain of being, the Universal Father of all things.

Vitai Lampadu tradunt.

And this is allowed, acknowledged by all Mankind: for affoon as Children can Govern themselves, we declare them free, that they are sui juris, they are extrasamiliated, and become themselves Fathers, and acquire to themselves.

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The Jews, who had a Kabala of the truest and most antient Theology and Morality, best understood their own Laws, and were furnished with the knowledg of what Power and Authority Fathers had over their Children, whether by nature, or by vertue of the fifth Commandment, did take their Sons to be ipso jure Emancipated and sue potestatis as soon as they were pubertatis plenæ: The time of which they reckoned, at the farthest, when they were 13 years, 3 months and one day old. And therefore whereas it was one of the Laws of Moses, Deut. 21. v. 18, 19, 20, 21. That the stubborn and Rebellious Son, at the Complaint and Prosecution of the Father and Mother, was to be juded to be stond to death; They say a Son was not under this Law until he was 13 years and one day old: for until that time he was not Filius pracepti, not bound to any Laws: As not

not until that time presum'd of competent cretion, consideration, or conscience, to make eve a Transgressor, or Breaker of a Law. But is a Months after, they reckoned him complete mass dult, upon a general Presumption: when know fooner, if he were fooner adult) he was free Chil the Power of his Father, and could not in proposed mentioned Law, which condemns the relies wor and stubborn Son to be stoned to death his Fo Fo monides Tract. Memarim. But the Father not struck the Son, after he was adult (the Jewst no nus) incurred Excommunication, for that he Act fended therein against the Law, Levit. The life Thou shalt not put a Stumbling-block before the life man By which Precept they understand all things a pedecent and dishonest to be forbidden. By which decent and dishonest to be forbidden. By who as s it doth appear, that the Jews did not take their may Children to be longer under the authority of part their Fathers, than until they commenced in the about foonest account, Men. Besides, that Law of Deat Ou Chap. 21. seems to be onely a permission of to unnatural kind of severity to the offended he for rents, at whose suit onely the punishment of according to Law could be inflicted; such a fort of permission natural kind of severity to the offended he for rents, at whose suit onely the punishment of according to the severity of the sev and liberty it was, as was indulged to them in the

But that which hath imposed upon an Gentleman, I believe, is, for that while to the are to be educated, Parents exercise and to thority over their Children, which a sower in ther may imagine to be Power. This is dr

ieve gave the Gentleman his mastake, because ie saith a Child and a Slave doth not differ; which is a shrewd indication that he was something too masterly over his Children. But all equal parents know and understand that the Education of their Children is duty and care; and it may, not improperly, be called a Sort of Generation-Work.

For I pray let it be considered, That the setus is not persected assoon as it is extruded the Matrix, no not until it be able to perform, unassisted, all the Actions of its proper life. That the life of a man is a said life of Reason. That he cannot do the Acts of a

ife of Reason. That he cannot do the Acts of a man until he hath it in the exercise of it. He is not a perfect fœtus, so as to be neglected by his parents, as soon as he can feed himself: the man after this may miscarry; and after this, if exposed by his parents, and not continued under their care, be the abortivated. Education is a kind of Incubation. Our faculties are to be formed and drawn out into use, as well as our body to be organized, before we can be denominated men. While this is accomplishing, the parents are but executing the natural instinct of propagating their like; until they have made them men, they are not begotten in their own likeness. They therefore with an easie propension, and a natural care, do apply themselves to offer things to their observation, to furnish their Memories, to try their judgments in little Essays, to render them discoursive, to It draw out their faculties into use, until by little feve

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and little they arrive at discretion, and a m to form true judgments of what belongs to the and to govern themselves in such Affairs and

finesses that are to employ them.

But while this is a doing, they are a Government of love and care, by the of Discipline to be trained up to period have Several freakishnesses and caprices are no cured, and the strength and luxuriance Appetites are to be aban feveral natural and restrained; and they are to be but attention and observation, and made mind of instruction: correction is to be adminite to these purposes, and by these mains but this duty of Correction doth not participate any thing of the Nature of Civil Governmen It hath nothing of the Nature of punishment, ex emplarity, or vindicative Justice.

It is not for the gratifying of the Parent displeasure to secure him against wrong or in jury, to deter others, but to amend, import and better the Child, and always termina to, and directed to that end; and by measures it is tenderly and affectionately and

nistred.

It will not be impertinent to observe, that of Common Law had no opinion of any Sovery Authority in a Father. And also that the Strut of 25 E. 3. which declares petty Treasons we as high Treasons, doth not declare the soul ing the Father to be Treason, the Treason!

for a Servant to kill his Master. In which we have the Authority of our Parliament, and of the constant opinion of our Judges. That the nature and relation of a Father and a Son, the nature and relation of a Father and a Son, doth not favour anything of Government, or of a servile or Political subjection; For that they have not made Parricide Treason, though it is the most unnatural and most detestable Crime, and a far greater fin than that of killing a Master.

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But further, to clear the true notion of a Fathers Authority, that it is duty and care, not Empire and absolute will; Let it be confidered, that God by his right of Creation hath an absolute, plenary, and direct dominion over us; we are more his than we are our own, or than any thing can be ours Yet when he was pleased, of his gracious condescention to our capacity, to quiet our fears of his power, and to invite our love, and assure our hope, he did declare himself our Father, thereby to assure us, that he would not rule us pro imperio, and according to his absolute right he had cver us. That stile he himself delights to use, and gives us leave to call him our Father; by which we all understand, that he will not proceed with us according to his Right of absclute domination, no not in the terms of strict Right and Political Justice: But that he will consider our frame, pity our infirmity, correct us as his Children, but not punish us with an exterminating Justice.

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Amongst the Romans antiently no man admitted a Judge in Criminal Causes, but that was a Father of Children; that the verities of a Judge, might be abated by tenderness of a Father; that he who had? dren of his own, might have the more to those of others; so different is the of a Judge, from the natural duty and this. It is the greatest violen ness of a Father. that can be done to Nature, to compelate ther to fit in Judgment upon his Son. No to that of obliging and compelling a man execute himself, to make it the Fathers on to pronounce a capital Sentence upon the in is the most unnatural thing in the world. In Father and the Son in this confideration are con juncta persona; and when the Sin of the Father is visited upon the Son, the Son is afflicted, but the Father is punished; and when the Son bath the Question, the Father is taken to be conselled in tormentis filii.

But for a further instance to make it pear how incompetent the duty of a Mag strate is with the Nature of a Father, I was observe, that notwithstanding a Law was got to Adam and all his Sons, to establish Judge tures according to the Tradition of the Jos as may be seen in Mr. Selden his Book duto Gentium Secundum Hebræos; which Law by the way had been supervacaneous, if the Powers a Prince did belong to Adam in the right of the Powers and the powers and the powers and the powers are the powers at the powers and the powers are the powers and the powers are the powers and the powers are the powers are the powers and the powers are
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offis pater paternity, and a Government had been provided for them by their Birth. Yet, I say, notwithstanding that, there was such a Relaxation of Justice in the World before the Flood, because it could be onely administred by a Father, or such who participated of the stock of love lodg'd in the common Father, from whom his Children did derive their tenderness one to another, as they themselves sprang from him. That the World was grown fo wicked with in two ages (as men then liv'd) from the creation, that a Universal deluge was brought upon the World, by the just Judgment of God, for the outragious and infufferable Wickedness that had spread it self-univerfally over mankind, 8 persons onely excepted. The overflowing deluge of Wickedness, that caus'd the deluge of waters, can't be imputed to a more probable cause, than to the indulgence and impunity that the observed and understood nearness of Kindred that all men stood then in to one another must naturally occasion.

This is a fad consequence of that natural Love in Parents towards their Children, which was intended for the propagation and advancement of Mankind. But fince that now we are estranged one from another in remote and unknown degrees, and that prejudice is over; Here is a Gentleman, to destroy the World another way, and to undo us by unreasonable and unbounded power, (wich is alike apt to make the World sit for another Universal destru-

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ction, if it be not without more destroy flow by it) doth endeavour to turn the exercise this fuch power into a Right, and to give it we ranty from the Reason and way of our po pagation; and by this means to destroy usi ster than we can be born and bred, and im the Generations of Mankind, to render then extreamly miserable, or wicked, which is mi worse; extinguish the light of the world, with is Love and Amity; and destroy the enouragement and reason of almost all relative Mon

lity.

What a Saturnine Father have we got, to make a golden Age! who ever would have thought, that the some the most moving, kind est, most tender, pleasing, and beneficent in stinct in Nature, planted by God the Father of us all, for the propagating, educating, and improving humane Nature, should ever be made use of to found a Right of Tyranny, and Arbitrary domination, the greatest destroyer and depraver of Mankind? What Monster hath this last Age produced! a Chris an, a Father, seriously endeavouring to po swade all Mankind to offer up their Children to Moloch the Saturn of the Fasterlings, wh was but the Devil of Tyranny, as the name in ports!

This som the true Origine and Fountain of Love and Amity, and the focial Virtues which render men humane, from when

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flows all the happiness of Mankind, will by this Doctrine be corrupted and rendred unfincere and felf-defigning. For when a Father performs an Act of Generation, it seems now he designs to add a slave to his Retinue; and when a Child is horn, there is another Item added to the Inventory of his Estate. If this Fountain be corrupted, there can be nothing fincerely kind after it in Humane Nature. The Leviathan is out-done by this Gentleman, and hath not performed half so renownedly in the great Work of depraving Humane Nature, as our Patriarchal Knight will do, if his Admirers can bring him into vogue and esteem.

For the Author of the Leviathan allowed fomething good in Humane Nature, feveral equal propensions, which he terms her Counfels, and fometimes adventures to call the Laws of Nature: But he concludes they are not practicable, and they are onely fools who govern them-

felves by them.

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But this Gentlemen will not allow Nature to be good in her first institution and designment; though in this I think they are near agreeable, that Mr. Hobbs made the Pourtriature of Humane Nature in an agreeableness to his own evil Ingeny; and this Knight did fet himself: when he made this his draught of a Father, he could have no other Original but himself, or the Idea of themorose and sour Dr. P. H. his admired friend; but by his Character he had at least misfigurep

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misfigured his understanding, and made it

own Nature by liking it.

2ly. No more of authority belong to all over his Children, than does to any of Children over his; for that this Authority ceeds from Nature, and Nature is alike in men. The duty of their education, and that thority over them that is competent that purpose, is as much belonging to them, and cumbent upon them, as upon the Protopher The duty is so personal, consisting in x fore, that cannot be transferred, or permitted absolutely any other person by the Parents; nor can any man challenge a right to it, or discharge the state from it, or require the same affection, in mission and reverence that is due from a Children his Father.

To expect relative duties without Relation, is most unnatural; it is as impossible as incongruous. We may as well love and hate, report and grieve, without the proper objects and is citements of those passions. The fundament Rule of all morality, is that of Epidetus, where the relations and the relation in which we stand, the relations and in spects under which we are considered, our duties are determined, measured, and adjusted: upon which see Simplicius his Excellent Discour, wherein many things are said agreeable to up purpose. This moral Aphorism is as certain any proposition in Euclid, as the Doctrical

proportional Triangles, and received as such by all the Masters of Moral Philosophy. There is no other foundation of our duty to God or Man, or towards our selves: This Rule, whatever it is, must declare it. Whatever is measured and allowed by this Rule, is commonly called, (which is comprehensive of all that is honest, just, and fit) The application of this Rule is called by St. Paul λογίζιδαι πέσεμνα, which when a man obferves, he is perfectly moral. A man may as well pay his debts by giving away his Money, be grateful to his benefactor by being beneficent to Strangers, as perform that duty he ows his Father, to any but he that is so: It is as imposfible to separate the shadow from the Substance, as to make that subsist by it self, which grows by resultance from the state and condition of the perfon; Or that without that state of the person, from which it doth arise, it should ever accrew.

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thority over all his descendents, which must grow (if there was any such thing) from some positive institution, and not from his paternity, yet the natural Authority and duty of Parents towards their Children, continues entire together with Soveraign Power, and is not at all abated by it, and therefore cannot be the same. No Soveraign Power can extort the Children from their Fathers Authority and care: This is a duty in Nature before Governments. They cannot belong to the Government, before they

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are fillii precepti, and capable of the Con ence of a Law. It is a duty in Parents to ducate their Children, and a right they have dulg consequence to govern them, that cannot hat taken from them. It is the Parents dur alle form their Consciences. They are appointed the God, the great Ministers of his Providence wel Grace to the Children. That they perform Office, he hath tyed them to it by the juditive attention by an irreful the performing when the five attention is a second to the performing when the five attention is a second to the performing when the five attention is a second to the performing when the performi Nature, by an irrefistable love and tye om Endearment that cannot be broken. This fo.f clares their Right of Authority over their Chi. kne dren, against any interposings of Soveraign An Jun thority to its prejudice, let or hinderine. The mas Aquinas politively determines, that it is no lawful for Christian Kings to baptize the Chil dren of the Jews against the will of their Parents, for that (faith he) it is against the course of natural justice.

4ly. There is no footsteps in the Records of the old world to verifie this Hypothesis. That such Authority was so much as pretended to be the or exercise by Adam; but we find instances gainst it in the short History before the Flow Cain received no sentence from Adam his Prin and Soveraign Judge, but from God himfelf, rather from his Shecinah, or some visible Rem

fentation of his preferce.

Thence he obtained some degree of input nity, and his life protected. No mention he t all of Adam his taking the Tribunal, or Cains arraignment, or of any pardon or indulgence granted by King Adam. Lamech
that had killed a man by michance, did not
alledge his case at his Father Adams Court, and
the matter of extenuation of the Man-killing;
we hear of no pardon of Course to be allowed,
when the circumstances of sact had been first
judicially considered.

How could a thing of such importance be

omitted in the story of the old World, though fo short? It was of more concernment, than to know that Tubal Cain was the first Smith, and Jubal the first man that made a Musical instrument, to know the original nature and reason

of Government.

Besides, we find all the grand-Children of nts, Noah becoming Princes of Countries, and the Sons and grand-fons of Esau alike Dukes and Princes; that is, at least absolute Fathers of their own Families, and ruling over fuch as were their flaves and dependants.

And the 12 Sons of Jacob are all called Patri-

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When Nimrod plaid the Tyrant, we find nothing faid for his justification, upon any Patriar-

chal right.

But if we consult the Traditions of the Fews, they will inform us of another original of Government, and that is this: They fay that God gave several Precepts to Adam and his Sons,

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Sons, and Noah and this Sons, and one and the rest, that they should erect Govern which his Sons could not have perfer without Rebellion against their King-Fat Adam had beenfo, as Sir Robert Filmer first

ther Also besides that of making Govern for there was a Precept given them of home the their Parents, Selden de jure Natura fen pro Hebraos, fol. 792. And therefore the Per rais of honouring Parents, is a distinct duty hac that of obedience to Governments. In Precept they had Authority in general to stablish Governments amongst themselves, the specification of which, they were left to the own liberty and discretion, and therefore m not obliged to any fingle form of Governmen It must be understood, that the Precept which re quired the Sons of Adam and Noah to establish Governments, required also every mans Sub mission to their Orders, Laws, and Decrees, whe established.

Laftly, We will confider of the instances gives of the Exercise of Soveraign Power by thers of Families, which are as impertinenting purpose, as his Doctrine is groundless and pred ous: but they are these: Abrahams War, and dahs Judgment upon Thamar.

As to the first, of Abrahams making W We say we cannot allow that making " doth argue any Soveraign Authority: 10 sufficient, that he who makes it is under me Fath, one

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o make a vindicative War lawful. For an njured Person may, in the State of Nature, vindicate wrongs by an Authority derived from God and Nature to a just satisfaction: Because there is no competent judicature to appeal to for right and redress. But see how unhappy the Gentleman is! This very instance of his production, is clearly against him: for if Soveraign Power had been Patriarchal, Abraham had been guilty of Treason, in making War without a Commission from Melchizedech the King of Salem, who, as the Learned men conjecture, was Shem his Patriarch and Chief, and known by him for fuch. But because Abraham, the best man perhaps in any Age, did not take a Commission from Melchizedech his Patriarchal chief, and yet he was bleffed by Melchizedech when here turned from the War; We may conclude, that neither Melchizedech nor Abraham knew of any fuch Patriarchal Soveraignty.' And also from this great example it appears, that it is lawful for him that is not a Soveraign, if he be not under any, to make War.

I will not enter into a discourse, whence and how is derived the Authority of making War and capital Sentences, (for the same reason must warrant both) which hath puzled some great Divines. Dr. Hammond, that great man, was at a loss in this enquiry, and thinks that nothing but a Divine Authority can warrant

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them, which hath put them upon strangent vagant Hypotheses of Government, and sent Knights brains a Wool-gathering. But this statissise any man of sense, That whatever is cessary for the general happiness of Manha and for preserving peace in the world, and not tecting the innocent, and dis-inabling them ty oppressors, is more commendable to be than the killing a man in his own defence is the sense of the

ply lawful.

As to his second instance of Judah his & tence pronounced upon his Daughter-in-law Thamar, which the Knight would have an exercit of Patriarchal Soveraign Authority; Wefay,hw could Fudah do this by a Patriarchal Power, who Facob his Father was then alive, and for all that appears, Judab his Son was not extrafamiliated Befides, which is very unlucky, Thamar was then none of his Family, or of the Subjects of his Domestick Empire; for his Son her Husband being dead, the was free from the Law of her Husband and ceased to be a Subject of his Paternal King dom. But Mr. Selden, under the Authority fome Rabbins, which he cites in his excelled Book before-mentioned, fol. 807. faith, That & dah might have the Office of a Prince or May strate in a district in that Country, and byth Authority might judge her according to the Las of that Country. But what the Law was, and the Nature and reason of her Offence, by which became Capital, is not understood, as he tells in the place before-cited. I shall not trouble the

Reader with unfolding the matter.

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But why doth he trouble himself to make Kings Fathers of their Countries? some cannot be so, and some have no mind to be so; and yet they ought to be Kings. And some that have not been Kings, have been so, and so styled; as the great M. Tully, for defeating the Catiline-Conspiracy, was by decree of the Senate called Pater Patriæ. Those are with reason truly called Paters patriæ, which either relieve their Country from miserarable pressures, which is the civil death of a Nation; and for this reason our King hath the honour of being called Pater patriæ, and we hope that he will wear that honourable Title, upon a second deliverance of us from a most deplorable condition.

Or else such are called *Patres patriæ*, who bring the Nation to an exalted state of happiness, so much beyond their old state of things, that they seem to give the Nation a new civil Life, Being and Birth.

For his etymological argument from the notation of the Word, it is too putid to be infifted upon, though not more ridiculous than his Hy-

pothefis.

But for that the reduction of our duty to our King to the fifth Commandment, may feem to give fome advantage to this Hypothefis, with Fathers who know no bounds of their power over their Children; It must be observ-

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ed, that the Decalogue is not a compleat h of Morality. The Decalogue comprised Principal Laws of that Commonwealth wh God their Law-giver by a most Solemn An for his Legislation, did more awfully oblige then mo observe.

God that time was their King; Rebin led was as Idolatry; and the fin of Witchcraft, at the Defection of one of their Cities to Idolan Bo was punished as a revolt and Rebellion, Da jest 13. v. 15. He had provided for his Home fen and Worship, and their Allegiance, in the if the Table; and did design by the fifth Commitment to lay the Foundation of all politive mo rality, by providing for a Reciprocation of kindnesses, by injoyning the gratitude and fit tio ting returns of Children to their Parents, and fre by putting Children under obligations to be taught and instructed by their Parents. But our duty to Governours is more duly referred to the all the other Commandments, because Govern A ment secures the observation of those Laws tous th by which we enjoy our felves and ours, fred from the Volations of Lust, Appetite, Fraud and Violence.

We do not honour our King by relief in h fortune, which is commanded to be done in our Parents in the precept of honouring then; our subsidies and Aids are not to that purps, but contributions to the charges of the Govern ment; they are the just price of our immunity protection, from fraud and violence; for which

cause pay we tribute.

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But whatfoever he be, that hath more respect for this Knights works than I have, may find him more gently treated by a very worthy Gentleman, in a very candid and judicious Book called Patriarcha non Monarcha.

But what is the meaning of these flattering Books? they cannot but be nauseous to His Majesty, who is a very wife Prince, and knows how fenfless such Books are; and besides, they make the People afraid, and the Nation unquiet, from the apprehensions they give, that the Government will be changed. Notwithstanding the King hath given fuch solemn assurance to the Nation by his late Declaration, That we shall have frequent Parliaments, and that he will govern by Law.

They would have had a better market for the Divinity they bestow upon Princes, with Alexander after he had lost his Virtue, and with those vile Emperours whose Names are Regum opprobria, for such the flatterers of ancient times Deifyed; those who had ceas'd to be men they made Glods, and when they had left nothing about them that was tolerable, they magnified their power; which was already most intolerable.

If the Kings hereafter would but read the History of Kings, under that conclusion, that a wise observer of Humane Events made after

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make Experiments of the truth of it in to own reading, Kings would be glorious, and Nations they govern happy and full of the They would find therein to many effectual cuments to fear God and regard men, and them righteously. It is this:

Si Vitam spectes hominum, si deniq; More, Artem vim fraudem, cuncta putes agen. Si propiùs spectes, fortuna est arbitra Rerm Nescis quid dicis, sed tamen esse putas. At penitus si introspicias, & ultima prims Connectas, solus rector in orbe Deus. Alciat.

People can be no happier than Government and Laws design to make them, thoughthey do not always answer the good designments of the Government.

To what purpose then are these new Hypetheses fram'd and published? Kings are expected by their Office; and the sacredness their persons, from all sears, but the search Nature, and these can never be discharged. Those who do ill, will sear ill eternally, they their power were made little less than one potent; for the frame of Humane Nature made it necessary to be so. Besides, God made one thing against another: There is Divine Nemesis interwoven in the nature

things. And God will always govern the World.

Omne sub regno duriore regnum.

The great Mogul at his inauguration swears, That his People shall be at peace at home, and victorious abroad, afflicted neither with Plague, nor Famine, but enjoy Health and Plenty all his

days.

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This feems extraordinary Pompous and Arrogant; but it means no more than this, that he will govern them fo vertuously, that Gods, Providence shall be always propitious to his People; and is no more in plain English, than what our Church offers up in her publick prayers for the King, (viz.) That he may govern us in Wealth, Peace, and Godliness; that he may live long, and so govern us, ought to be every honest mans Prayers. But after all these vain Hypotheses contrived for making Kings Absolute, it will be more easie for Kings to make their Reigns unquiet, and turn their Kingdoms into Fields of blood.

But lastly, to revive the ancient Zeal of the true Members of the Church of England against

But lastly, to revive the ancient Zeal of the true Members of the Church of England against Popery: To rectifie the mistakes of some Gentlemen of the Clergy about the Dissenters: And of our late Parliaments, and their proceedings in reference to them;

Let it be considered, how unreasonable their

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apprehensions are of any danger to the Char of England, from the defires of the House Commons of some indulgence or tolera in favour of the Dissenters at this time; the ally when the Protestant Religion is so sim ly beset: she hath reason now sure to take fuch for her friends, that are heartily Emily to Popery, though not so skilful as they had be to ward off its assaults. Since the Paris prefume to call them Fanaticks, though exall conformable to the Church of England, the will not affift to bring on the Popish Plathy dif-believeing it; and put us in fear of the h naticks, by taking all the courses imaginally to provoke and exasperate them, and to incred their discontents (which they maliciously heighten, and by falshood and forgeries misre present): To graft thereupon a Pretence of Protestant Plot, for a pretext to extirpate Pro testantism and introduce Popery, which the impudently pretend to be of a more firm All giance to the Government than the Reform Religion.

I pray let it be considered, that that whi is tolerated is put under disgrace, even for the it is tolerated; and that which tolerates, for that it tolerates, hath the Governing Autority; and in so much as it indulgeth, it disgets to modesty and reason; and if that add gence should be abused, it may and will be tracted. It was never intended by the bust

of Commons, that the Church of England should be altered or modelled to an agreeableness to any form or sect of the Separation, or prescrib'd to by any of the Dissenters; or that she should be made subject to any of their rules or opinions, or her Liturgy laid afide for Directories, or, which is worse, undervalued to the prophane way of extemporizing: For as generally used and exercised, it deserves no milder a stile. That the Church should always govern by ber own Wisdom in her own Province, and in those things that appertain to her, can never be deny'd ber.

No man hath reason to say, though he hath great cause to dislike the Separation, and to have a bad opinion of the Dissenters, that he had rather submit to Popery, than to any form of the Separation, for he need do neither except he pleaseth. No man that thus expresseth himself, but will be suspected to seek an occafion and pretence to become a Papist, and to make a defection from the Church of England.

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But if these Gentlemen have such a displeafure against Schism and Separation (which certainly is the worst disease any Church can labour under, and at this time threatens the destruction as well of the Protestant Religion it felf, as it doth to the Professors of all denominations) let this sharpen their Zeal against Popery (which by its unhallowed arts hath occafioned and exasperated our Schism,) and put them

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them upon the use of all means to reconcile possible, the Schism, (that the Papists have ready made, and by all means endeavour continue) and take away, if possible, the on sion of it for the time to come: And thus feat the arts of the Priests and Jesuits for supporting our Church.

It is a most deplorable thing, that our chuch should be kept rent and divided, in danger of him lost, between Rituality and Scrupulosity.

Though the Scruples of the Nonconformile which I always thought, and do still this groundless, and unreasonable, have often moved me into some passion against them; yet upon consideration, I think this their Scrupulosity my be of God, and that some men are by him fa-That he hath provided it, as a bar med to it. and obstacle in the Natures and Complexions of some devout men against any Innovations whatfoever, that dangerous ones may not feal upon the Church, for the better maintaining the firm plicity and purity of the Christian Religion and Worship. But in faying this, I have said to thing that is apt to give them a conceit of them felves, bur rather to humble them: For thehe men are not govern'd by their Temper and Con stitution, but correct them by their Reason, at determine themselves by a clear and firm July ment.

What affrightment, all this while, either to Church or State, from this weak and pityal

Scrupulofity? Where lies the Treason or Sacriledge, nay or so much as contumacy against our Ecclesiastical Governours, which is so much upbraided to them?

The Christian Religion may be prejudiced by addition to, as well as substraction from her rule: The Church of Rome by her additions hath al-

most evacuated the Christian Faith.

Besides, there may be a finencs in the outward mode of Religious Worship in itself very justifiable, which may be not congenial to men of a coarse make. The Worship of God will always savour of the manners of the people; men of dull capacity can scarce admit of any Ceremonies without danger of falling into superstition, or hardly escape being vext with endless and incurable scruples about them, until for ease of their minds they throw them off.

But the wisdom of the best Law-makers hath considered in giving Laws, what the people would bear, and not what is best to be enjoyned; and many things have been tolerated by them which they did not approve, ne majoribus malis detur occasio, aut etiam ne vilescant sine mori-

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There is nothing more exposeth the Authority of Government to contempt, than a publick and an open neglect of its Injunctions. But where obedience to Laws is exacted under severe penalties, where it doth not greatly import the common good to have them observed,

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that Government is unequal, and useth its heers thority unjustifiably. Leges cupiunt, ut jure h

gantur.

The confideration of the fad effects have Schism in our Church hath occasioned, the rem tempt that it hath brought upon our Edd beer aftical Governours. That Religion it heat thereby made the scorn of Atheists. That and Papists are thereby furnished with matter of to n jection, reproach and scandal to the Resonatinju tion. That every Age fince it begun his mat heightned the malignity of the Schism. The Rela it seems now to despise the Cure of the greates Chu Cassanders. These considerations, I say, maker infinitely desirable to have it utterly extinguished bre

There feems to be now left but one way of and accommodating our Divisions, and that is, ed. that we do not hereafter make those things and wherein we differ matter and reason of Divile

on.

That the Children of the Light and Refor, it. mation, be at length as wife in this matters the Church of Rome, which is at unity what ac it self, under more and greater differences that en those that have troubled the peace of our Church di which is fufficiently known to all Learn men.

Had it not been happy, that this Schill had been prevented by the use of the port of the Church in Ecclesiastical dispensation If no Law had been made touching the m

its hers that gave the first occasion to the Schism, interest had been in the Power of the Church to have prevented it. No good Bishop but would have relaxed the Canons that enjoyned these Ceremonies (about whose lawfulness there hath been so much Zeal mispent, and unwarrantable heat and contention raised) for the sake of peace, and preservation of the Unity of the Church, to men peaceable, and otherwise obedient to her injunctions. So dangerous it is to make Laws in matters of Religion, which takes the conduct of Religion in so much from the Guides of the eatest Church.

The beginning of contention is like the breaking out of waters, faith the wife man; and they are assoon as begun, more easily end-is, ed. Before the Contenders have exasperated one gs another with mutual severities and contumelies, which at every return encrease, until both sides loose either their Virtue, or the Reputation of for it.

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Can any man imagine that any prejudice can accrew to the Church of England, if she did enlarge her Communion by making the conditions of it more easie? especially if this may be done without annulling any of her institutions, which the better instructed Christians will always, and the Weak may in time de-voutly observe. But till they can, they may be received and retained of her Communion, and not be rejected by fures; though they do

do not submit to all of them at present. Whe soler be any prejudice, that the Number of her Bills the be encreased, and that Suffragans be appointed not approved by the present Bishops, in parter states. citudinis, as was enacted by the Statute 26. HI defi cap. 14. Which Law was repealed by 1.2. Ph it? and revived by 8 Eliz. cap. 1. These Suffrage ged were not intended to participate of their Hours it is or Revenues. Had it not been much more best ligible to have dispensed with invincible Scripes not rather than a Schism should have been occasional true which the longer it continues will more inco- exception rable, and with greater difficulty accommoda our ted, as it grows likewise more mischievous have Is it fit that the peace should be hazarded, or the gre Nation put with reason or without reason in fear Fo of it: Or a Kingdom turned into a Shambles spi for a Ceremony, or a Ritual in our publick Wor. ne ship, which if omitted would leave the exercise ge of it solemn and decent? For no man know th the obstinacy of inveterate prejudices, founder th perhaps in the very Complexions and Nature of the Dissenters, hardned also in their way by observing how little effect Laws have had in reducing their Numbers, and also how unpr Cticable any Severity is in the present broken and distracted state of the Nation. Why my not Standing at the Sacrament be toleral, (though Kneeling is the devoutest gesture,and me most agreeable) when it is a posture of my er enjoyned in the Primitive Church, in thir folemn

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folemn meetings for Divine Worship, between the Feasts of Easter and Whitsontide? Why may not the signing of the Cross in Baptism for the fake of Peace and Unity, be dispensed with where He desired, when the Sacrament is entire without Ph it? Why may not our publick Liturgie be changed and altered, though it may be defended as it is, and as it is, entertains the devotions of the best men, merely for this reason, because it is not liked in some parts of it by some men, yet truely devout? Besides, it is the wish of some excellent persons of the Church of England, that our publick Offices were more, and those we have not fo long; and that the Church had a the greater Treasury of Prayers, and by variety of Forms for the same Office, were enlarged in her fpirit of Prayer, and her publick Devotions height-Wor ned. Why may not the Rubrick be altered as general scruples shall arise, by the Authority of the Church? this would not lessen her Authority, but advance the esteem of her Wisdom in the exercise of it, when she useth it for edification.

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It is much better fure to give place to an innocent opinion, when entertained by confiderable Numbers, though a mistake, than to keep up contention and strife. Peace in the Church is better than precise and nice Orthodoxness; and Union is to be preferred before unnecessary Truth, which is of no more importance to our Salvation, than one of Euclids Propositions.

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positions, though to be sure not so certain, and less use.

The business of the Church is not to men great Clerks, to improve us to the tilty of the Schools; but to build men up in Faith and Love of God, by which they man instructed to every good Work. Her aim in to make men courtly in their behaviour in Churches, but truly devout: and true devoir will never fail to make the Publick Worship to lemn, and advance it beyond a decent formal

ty.

But I would not be mistaken; it is not the Diffenters I intend to befriend, but the Church of England: for as for them, I declare I have no liking to any thing they fay or do; and am especially distaissied with their very bad manners. It is difficult to abstain from an inve-Etive, but that I think it would be thrown away upon them, and that they are at prefent incorrigible. This is not the season for instructing their Wisdoms; we must wait in the mollia tempora fandi. I thus conclue, fince that excellent person the Dean of Paul hath been treated by them with fuch pen lancies and rude infults, for his Sermon of the mischiefs of Separation. If a discourse manged with almost irresistable reason, candon, temper and Address, be matter of exasperann, and they turn again, and are more hardned in their obstinacies, and become more confirm in their separating way, nothing but their own thoughts, and the consideration in what a defperate condition they have brought the Reformed Religion by their Separation, will reclaim them.

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But it is expected that Governments should be wife, that they manage and controul the Follies and Weaknesses of those committed to their care, that they may do the least mischief to themselves and others, and by prudent and practicable methods amend and reform them. The most froward, weiward, and stubborn Children give their Parents the most care, and opportunities of exercifing the most tender love for them, though they can take no complacency in their awkerdness. The Church of England is concerned to retain all her Children in her Family, to shut out none by abdication; that their numbers be not few, and she be ashamed when fhe speaks with her Enemy in the Gate. Not to provoke any of them to wrath, lest they forsake her, and turn against her when diffresses shall come upon her. She hath reason at this time sure to make her Discipline easie, and to learn of the Church of Rome to be more comprehensive. Their Doctrine of comprehension is so large, that it destroys the Religion to encrease the Number of Professors: but I mean no more, than that positive and alterable institutions may give place to the peace, fecurity, and preservation of Religion it self,

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It hath been heretofore, of old it hath he and said, Mores Leges in potestatem pertraxerunt to Plato formed an Idea to himself of a Comm wealth, without respect to the manners of m but he writ another, which he calls of inthinted is to fay, accommodated and fitted to the m ners of the people, and fuch as they would be Origen, in his Book against Celfus, applies to the fes the Answer of a famous Law-giver, who asked ei Tes passis es ilelo rois moderans vopuses i.e. whether the Laws he had given to his Citizens were thebel the answer was, के नकेंद्र मुक्कीवनार्व मुक्कारियह क्रें केंग के मांगी महामा se. i.e. not fimply the best, but the best the And we all know what God perwould bear. mitted to the Fews, in the matter of Divorce, for the hardness of their Hearts. When all is faid People must be governed as they can.

But in the mean time, it is pity any of our zeal and indignation should be mispent, who we have use for it all against the Church of Re. the fource whence all our Divisions spring. which we owe the first Separations that we made in our Church; which appears by under able Records, published by Dr. Stillingsleet, 1 his Book called the Unreasonableness of Separ-How they have propagated, multiple exasperated, and promoted our Divisions, total you, would make a Volume; besides, no Prostant is now to know it. I have onely this it. ther to observe, that the Church of Rome at first onely designed by the arts of dividing us, and breaking us into several Communions, to disgrace the Resormation, to make our spiritual Governours, Pastors, and Teachers, lose their Authority with the People: To deprave our Religion with licentious opiniastre, and absurd dogmatizing; to load our departure from that Church, with the mischief of innumerable Schisms; and to make us reconcilable to the Tyranny and Impostures of that Church, from the vain opinions and licentiousness of the Sectaries, who have been seduced, managed, inslamed, and made wilde by their imposturous Arts and Deceits.

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This, I believe, was onely at first designed by the Priests, but now they apparently design by the Dissenters to destroy the Church, or by the Church to destroy the Dissenters, that they more eafily come to rights with her. They imagine the Dissenters are very numerous, and that the Nation is fallen into two great parts; that the Diffenters numbers are vast. But God be thanked, they neither make our Grand Jurymen, nor the common Halls of the City of London, for chufing the Lord-Mayors or Sheriffs. And I challenge any man to give me a List of all the Names of Diffenters that were of the House of Commons in our two last Parliaments: I am fure they will not make a Number: but they reckon the Numbers of Dissenters, by the

great art to continue the Separation when haif Majesty was restored: Since, Laws have to the made to raise the Animosities of Dissenters, have to fearce ever executed for repressing them I the laws here and the laws here and the for any reason of state the Laws here and the appliant for a spurt, have been exacted, secret on several feet forts and supports have been given to be have Preachers of greatest Authority with the end And when they have seem'd to preach withthe tic courage and zeal of Confessors to their Aud for tors, they have not onely been assured of inden- ze nity, but have received rewards. How prof. th perously did the work of Separation go on by ma these Councils of our Achitophels! by these mens they concluded it would be heightned, that it th would admit of no terms of an accommodate fig on. How insolent were their Harangues! mon fe taking with their deluded Auditors, while by they apprehended them acted with an invin for cible zeal of Religion. What Animations de I their People receive to defy the Church and be t Authority, when their Preachers despised Fines of and Imprisonment, to their seeming, out of pure zeal against her Order!

It is well known, several of them were in Pension; and no men have been better received by the D. than J.J. J. O. E. B. and W. P. &c. Ringleaders of the Separation. Besides that Popish Priests have been taken and executed for preaching in Field-meetings in Scotland. They have

raised there a sort of Enthusiasts more wild and hen mischievous than any we had amongst us in the times of licentiousness. They have had, notwith thanding, great Lords that have patronized in their them, who were always well received in their applications in their favour, at St. James's; and feveral of their Preachers, who were not Priests, have received Exhibition and Pensions for their then encouragement. It was necessary that the Fana-tithte ricism planted in Scotland, should be very loath-some, to make that Nation abate any of their inden zeal for the Protestant Religion, or to neglect their fears and apprehensions of Popery, or to on by make the least step towards it.

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mens . Awake, you drowfie Sleepers, open your Eyes! hat i the Sun is risen, there is light enough to fill your odati fight, if you would look up, and were willing to more fee. Could any thing be conceived more apt to while bring the Church of England into contempt and invin forn with those of the Separation, than to have Is de Laws made in her favour, penal Laws which are dhe thought to be of her procurement, and not exe-Fine cuted? Vain and ineffective anger is always fpun returned with contumely, scorn, and hatred: Cupide conculcatur nimis ante metitum. And fo it. hath succeeded in this case; nothing hath been more passable than the basest scurrility upon the Church, the Bishops, and the Clergie. The Atheist. the impious and profane, have listed themselves Fanaticks; that they might have the greater Liberty of reviling Religion it self with impunity. Con-

Consider how the Church of England is used which is truly the Bulwark of the Protestan About ten years since, they designed Religion. to flight her works, and demolish her, by age. neral Indulgence and Toleration: And now they intend to destroy her Garison, those that can and will defend her against Popery. of their Pamphleteers, the Separation is called an Usurpation upon the Government; and all the Diffenters (as fuch onely) Rebels, and Traiterous to the King. The same Gentleman would perswade the world, that the ready way to extirpate Popery, is by rooting out of Fanaticism: whether (faith he) the Fanaticks bring on the Jesuits Plot, or the Jesuits the Fanaticks, is not a farthing matter: But in the mean time, that the Papists have a Plot on foot, needs no proof. That any fort of Protestants are engaged in a Plot, cannot be proved: But all honest Protestants of the Church of England, think it more righteous to punish the Deceivers, and pity the Deceived, and wish them onely cut off that make Divisions. It is one way of curing, or rather of extinguishing the Disease, to kill the Patient; but no Prince did ever yet provide Cut-throats for his People, in epidemical Diseases, instead of Physicians.

But if the Papists could arm other Protestants against Dissenters, there would be the less work for Papists to do: And they will be sure to requite them for this Favour with Polyphemus his Cur-

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For, to give the Devil his due, they are not themselves so fond of Massacres and destruction of Hereticks, as to envy that employment to any other that will undertake it. They had rather any other Party of men should do the drudgery for them. Befides, what one fort of Protestants shall execute upon another, will give them better pretence and more hardiness (if they wanted either Pretence or Resolution to destroy such as they call Hereticks) to execute the like destruction upon the Church-Protestants, who certainly differ more from the Papifts, than the Separatists do from our Church. Surely there is good reason they should be more fharply treated by the Papists, than they treated the Dissenters. And if they are in such fort used, they must lay their hands upon their mouths, and be filent before their Persecutors, and acknowledge the righteous Judgement of God, in bringing such tribulation upon them, from their Enemies, wherewith they troubled their own Brethren.

But there are better ways fure of putting an end to the Popish Plot, than by putting it in Execution for them; That is to say,

By suppressing that contumacy that is grown so rife in the Dissenters against the Church of England, by putting the revilers of her Establishment and Order under the severest Penalties.

By the Church her condescention and indulgences to those that are weak and scrupulous,

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and the peaceable Diffenters, such Condeson tions will not abate, but magnifie her Auth

rity.

The Church of England will not be by this means lost, but her Governance preserv'd, especially if the Relaxation that shall be made proceed from her ex mero motu, and is not imposed upon her by any secular Authority. Nay, she will be come by this means more ample and venerable What Glories will then shine upon the heads of the Bishops! We shall all rise up and call then blessed. They will attain an impossions here, and receive divine Honours while they live. Their Order will be recovered into the highest Veneration, and it will never be after a question in the English Church, whether the Order of Bishopste Apostolical.

The Parliament will make all Laws yield and comply to such happy, peaceable, and gration Intendments. All the people will honour them as their common Saviours, that shall thus snatch us from the very brink of Ruine, and render the designs of the implacable Enemies of the Church, ready to take effect, to the destruction of our Re

ligion and Nation, utterly defeated.

But what punishments can we think too severe upon any, that shall be guilty of such insolent Iniquity, as not to allow that Liberty to the Church, which they seek as a favour from her to themselves; that will not let the Church scape their Censures, when she graciously exempts them

them from her Censures, and pities their Errours and Follies? What Fines and Imprisonments, Pillories and Scourgings, do they deserve, that perfecute the Church with Revilings, when they themselves are tolerated? Their condemnation must be just, whatever their doom be, themselves being Judges. They will suffer as evil doers, and disturbers of the peace, not for their Religion, but for a most extravagant and intolerable unrighteousness. They who will not tolerate others, are themselves for that reason most intolerable: Against these our Laws are to be sharpned, and their iniquities to be punished by a Judge. But the Statute of 35 Eliz. which punisheth dissatisfactions, and peaceable withdrawings from the publick Worship with Exile and Death, declares how odly the business of the Separation hath been managed, and with what disadvantages to the Church; as it doth also the impracticableness of Laws, that make perhaps invincible prejudices, and modest and peaceable distatisfactions, capitally criminal. The execution of this Law is scarce possible. It is by no means agreeable, either to the Christian temper of our Church, or his Majesties great Clemency, of which he hath affured us in the general course of his Reign. And especially for that that Law hath been very rarely proceeded upon. A Gentleman that lay in Cambridge-Goal, under the Judgement of that Law, was reprieved by his Majesty, with a great dislike expressed by him against

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against that and such-like severities. Whatever extravagances of a sew wild Fanaticks of the Age occasioned that Law, the State of the Separation and of the Nation being quite altered from what it was then, the execution of this Law now, would be something like a Seriss serving a Writ out of date in another Courty, which can have no effect but mischief to him self.

While our Dissenters are thus reasonably indulged, and strictly obliged to their peaceable behaviour, they can give no apprehensions to the Government either in Church or State. This is all that is designed, and all that they ought to have. This certainly would be readily yelded them in this present juncture especially, if the Evils of the late unhappy times did not stand up on their score.

But I perswade my self, that as this course, if it had been heretofore taken, would have prevented one great cause of our late Troubles; so it will in such measure prevent them from turning, as the Separation can be accounted to cause of them.

As for the Sacriledge and Spoil which was then made upon our Church, it could never have happened but upon the dissolution of the Government, nor can it ever happen again.

That War would have been impossible, if the Church-men had not maintained the Doctrine, that Monarchy was *Jure Divino*, in such a sent

that made the King absolute; and they and the

Church in consequence perished by it.

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the s But God be thanked, we see the Church again restored to her Endowments, grown wiser than to defire to hold that precariously, and at pleasure, she doth enjoy by an unmovable legal Right. Of the three Estates of this Kingdom (for to suspect any such thing of the King, would be unpardonable Blasphemy) there can be no reasonable suspition: Though of the House of Commons it is become now lawful to suspect, and fay any thing that is evil. But no man but the Villains that design by dishonouring them to change the Government, hath reason to entertain such a thought. The Members of the House of Commons in our latest Parliaments, were all, upon the matter, entirely conformable to the Church of England. They were persons of the best Estates, Reputation, and Honour in their Countries: and they, or fuch as they, are like to make our succeeding Parliaments.

I have leave to put them under the imprecation of the severest Curse, it ever they do sacrilegiously impair the Church of her Revenues. And I defire it may be affished with the hearty and passionate desires of all good Christians, that so the Curse I now pronounce may operate upon them who shall incur it. He that designs, contrives, or consents to spoil the Church of any of her Endowments; may a secret Curse waste his Substance; Let his Children be Vaga-G 4 bonds.

bonds, and beg their bread in desolate place Besides, I know it is meditated, and designated by many, and the best men, that use to besen to Parliaments, to redeem in part that in mous Sacriledge that was committed in the times of H. 8. Then Rectories appropriate to Religious Houses, which had by Appropriations the cure of the Parish, that ought after the solution of the Monasteries to be presented to were vested in the Crown; whereby not one ly the Church was robbed, but the People cheat ted of their Tythes, which were theirs to give, though not to retain their Pramium for the Priests -Ministrations; which are now often most senderly, and fometimes scandalously, performed As also to disincumber her Revenue of the Charges and Impositions of First-fruits and Tenths, which were imposed and exacted by the Pope, upon his pretence of being the œcumenical Pastor and High Priest of the Christian Church; and at that time likewise conferred up on the Crown, and are as unreasonably continued, as any thing can be that hath a Law for a

But for this, a Compensation may be given to the Crown; and some way will be sound out for augmentation of Vicaridges and re-indowment of Churches that lost all in that unparallel'd Sacriledge, committed by the unsatiable Avarice of that haughty and luxurious Prince. These designs employ the care of a great num-

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ber of our principal Gentlemen, to purge the fin and dishonour brought upon the Nation by that

extraordinary King.

But if there were reason for any fear that the Nation could again incur the guilt of Sacriledge, What warranty can this give to any of the Clergie of our Church to flack or abate the Zeal that is due for the purity of her Doctrine, prudence of her Discipline, and her commendable, decent, and intelligible Devotion? Are they worthy to be named of her, that are ready to dissert her, out of fear of a remote possibility that the may not always have fuch Largesses to give as the now bestows upon her Sons? Will they prefer the gift to the Altar, and declare all their Godliness to be Gain? To suffer Popery for fuch a confideration to be induced upon her, is a far worse and more detestable Sacriledge than that they pretend to fear. This is to make the Anathemata of the Temple to inserve to the dishonour of the Numen. To desecrate the Altar for the fake of the gift: And will by the just Judgement of God (I fear) bring the abomination of defolation again into our holy places.

Let none of her Sons, for the obtaining a Dignity, or a capacity for a double Benefice, betray her by neglecting her interest, thinking with themselves that she will otherwise be supported; for this their doings is no less than the sin of Judas, who took money to betray our Lord, imagining,

gining that he would by a Miracle rescue himself from the hands of those to whom he sold and he

tray'd him.

The honest of our Clergie will have littless tisfaction when that day comes. When they have be reduced to Prayers and Tears, if they are is ling in any thing that they may lawfully down prevent that miserable state, their Tears will be as water spilt upon the ground; and the Prayers will never find acceptance with Gol nor be returned into their own bosom.

Disce Miser pigris, non flecti numina, votis. Præsentemą; adbibe, dum facis ipse, Deum.

But above all, those fine men are not to pass unreproved, who are preparing pretences for their
Revolt to the Roman Church. They tell us, that
the Reformation is depraved, and Popery itself is
much amended fince the Reformation; that it is
not so grossly superstitious, (though her superstitions are still enough to stifle Religion) nor so
fabulous in her Legends, (she need make no new
ones, since she gives authority still to the old)
nor so imposturous in her cheats (for her Priess
have not been Hocus-pocusses of late, used so ma
ny tricks of Leger-de-main, and presented their
Puppet-plays of moving and squeaking Images)
since the Reformation, as before.

But they may know, that the reason why we have not maintained the dignity of the Resonantial

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mation intire, is this; for that Popery hath not been utterly extirpated from amongst us, though their frequent Treasons, and their notorious seductions have deserved it.

By its continuance amongst us, and the resorts of their Priests hither, it hath created and somented Divisions amongst us, and corrupted her Children from their obedience to her guidance and instructions: But she her self is still the same she was, the Reformation of the Church is still intire. She hath made good her departure from the Church of Rome; her Adversaries have not been able to convict her of any fault therein, and by an easie victory she hath triumphed over all their oppositions and contradictions.

And though Popery appear not altogether so deformed, by her Priests artificial Dress, and the Representations they make of her to seduce us, and entice us to come again under her Yoke; yet we know she hath more established her Tyranny by the Council of Trent, and more corrupted her Morals by her modern Casuists since the Resormation, and thereby hath rendred her self more

detestable, and for ever to be avoided.

But though it may be true, that the Popish world is beholden to the Reformation, and Popery it self is thereby amended in some overt things, and reformed in those Countries that have not reformed from her. For in the Light of the Reformation they have seen Light, and have been ashamed of some of their works

of darkness, and do not bring into present use some of their most gross Impostures, and some worse than Pagan Superstitions. Yet when this light is extinguished, it will be a most dismal and eternal Night upon the Christian world. If we return to her, our Ears will be bored, and we shall be irredeemably enslaved.

The spirit of Popery, if it returns and possesses us again, that hath been walking in the reformed Countries as in dry places, seeking rest and finding none, and finds us thus swept and garnisht, will bring with it seven Devils more wicked than itself, and our last estate will be worse than the first.

The Pride, Cruelty and Avarice, Domination and Luxury of their Priesthood, will be aggravated upon us, and the minds. of the Laity more lowly depressed by Superstition and Ignorance. The Gospel of Cardinal Palavicini will be the Canon of the Christian Religion, or it may be something worse; for who can tell what will be the Religion that that Church will offer in process of time to the world under the Christian-Name? When the Pope by his pretended infallibility may make the Christian Religion what he please, by interpreting, adding, altering, or detracting with an uncontroulable Authority. For us therefore to become Papists, to return to the Church of Rome, acknowledge the Popes Infallibility, (there is no other way to become Papists) is virtually tobetray the Christian Faith, to renounce our Allegiance to our Lord Christ, to prefer the Bulls of a

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profane Pope, to the holy Oracles of God, and the

Revelation of Jesus, God blessed for ever.

With this Religion therefore we can never make an accommodation; we may as well make a Covenant with Hell. This (as Dr. Jackson, one of the glories of the Church of England, in his Book called The Eternal Truth of Scriptures, vehemently admonisheth us) admits no terms of parley for any possible reconcilement: whose following words to this purpose, I shall here transcribe.

The natural separation of this Island from those Countries wherein this Doctrine is professed, shall serve as an everlasting Emblem of the Inhabitants divided Hearts, at least in this point of Religion: And let them, O Lord, be cut off speedily from amongst us, and their Posterity transported hence, never to enjoy again the least good thing this Land affords: Let no print of their Memory be extant so much as in a Tree or Stone within our Coast. Or let their Names, by such as remain here after them, be never mentioned, or always to their endless shame: Who living here amongst us, will not imprint these or the like wishes in their Hearts, and daily mention them in their Prayers.

Littora Littoribus contraria, fluctibus undas, Imprecor arma armis, pugnent ipsiq; Nepotes. Which he thus renders.

of Eugli Let our, & forein Coasts, joyn Battle in the Main E're this foul Blasphemy Great Britain ever stain Where never let it come, but floating in a Flood Of our, our Nephews, and their Childrens blood

I shall onely Subjoyn my hearty Desires and Pray. ers, that we may all fear God, and be zealous for his true Religion. Honour the King, and firmly adhen to the Government, and in our several places steadily oppose and resist those Villains that are given to change. That by our Union we may defeat the crafty designs of our cruel and implacable Enemies, who if they can continue those Divisions they have made amongst us by their wicked Arts, will certainly at length destroy us; who are bent upon our destruction, though they themselves perish with us, we cease to be a Nation, and our Language be forgotten in a forein Captivity.

Sir.

Now I have given you my Answer to your Reasons to disswade me from publishing the Argument for the Bishops; by representing how few of the Clergie can with reason be thought guilty of Opinions fo mischievous to the Church and State, which you charge to have generally corrupted them; and how eafily and with little consideration they will be laid aside by them.

I will make no other Apologie for the publishing this, than that I have communicated the thoughts to no Man alive, either of the Church

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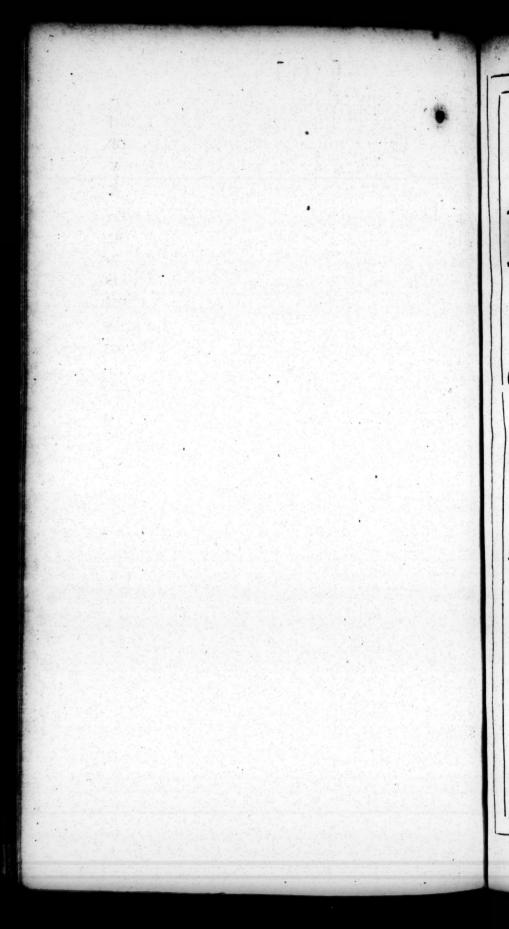
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of Eugland, or any other denomination, or confulted any mans advice about it. That I can eve the design of no party of men herein, nor my particular design of my own: I wish they an be serviceable in the least degree to publick good. I have had them by me a great while, and have considered them under the several vaneties of temper that our Bodies are disposed to, which induce different thoughts, and various apprehensions in most things, under the several passions that the fluctuation of publick affairs have occasioned; under the Ebbs and Flows of Hopesand Fears in reference to the state of the Kingdom, for some length of time. And finding them to have the same appearance, and to give me the same satisfaction in all their several postures, and the views that I could take of them. I assure my self I was sincere when I thought, and that they refult meerly from my Judgement (such as it is) uncorrupted. That I am not perverted or biassed by any secret passion or defire of any fort, which many times lurk and steal upon us, deceive us unawares, and undiscernedly abuse us. Sir, the sum of my Apologie is this; that I know my felf fincere, of honest Intentions, moved by nothing but a hearty love and affection to our King, Religion, and Country: and for what any man shall think of me, I am not Solicitous.

Yours, T. H.



The Great and Weighty CONSIDERATIONS

Relating to the

Duke of York,

o R
Successor of the Crown,

Offered to the KING, and both Houses of Parliament:

CONSIDERED.

WITH

An ANSWER to a LETTER from a Gentleman of Quality in the Country to his Friend, relating to the point of Succession to the Crown.

Whereunto is added,
A short HISTORICAL COLLECTION touching the same.

LONDON:

Printed for the Author, and are to be fold by the Booksellers of London and Westminster. 1 6 8 2.

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TO THE

READER:

Have in the Postscript offered Reasons of the Lawfulness of an AET of Exclusion, which to all true Protestants must needs be desirable, if can be lawfully obtained. Tet for the nther satisfaction of unthinking people, d Men of weak Minds, (who are never tain, (especially in great Matters)where m of Note are divided in their Opinis; but for that very Reason, where they we no direct Reason to guide them in ming their Judgment, remain scrupuus, if not doubtful; and for that they oubt, they must therefore conclude the tter, as to themselves, at least unlawful) have Reprinted these Discourses, (that ere Printed near three years since, in An**fwer** H 2

fwer to two Books, written by two by nent persons; the first supposed to be militial by a great Secretary, the other by a nothing Lawyer thereto employed, under proming and expectations of great Preferment This mans Book especially, is highly as planded by the Ducal Party; his on her words made the stile of the Act of Paleing ment in Scotland for the Recognition the unalterableness of the Descent of the Crown, and his Book accounted una be swerable, and the whole Cause, by the Alle be ters of this Doctrine, put upon the form and consequence of his Reasonings. A be indeed, I have seen nothing so considerable made publick and offered to the World, we the defence of the unalterable Right out the Descent of the Crown, as are the reasons of these two Books which we has the To the end that the reasons against to Bill of Exclusion, as well as the reason for it, being duly examined together, no by nest man may from a doubtful Conscience

any longer under a necessity of suffering Mischiefs of a Popish Successour, be m hich will be more intolerable when they nothing to be felt, than any imagination can rom ingest, or any words can express.

True it is, the Most cannot consider duly Matter, and determine upon it, by beir own proper Reasonings and Discour-Partings: and yet they have so much reason tion w to think, That where Doctors differ of they have respectively their reasons for their different opinions, though they All bemselves do not apprehend them; and he bey doubt they conclude unlawful.

Tet even the Most may judge what ld weight and moment the reasons and aruments upon which each party ground beir Conclusions are of, if they are truly, tharly, and nakedly propounded, reflected Capacity: and they may thereby be brought discharge their doubt, and determine pith clear satisfaction, in any matter so dis-

cuffed, H 3

cussed, if they will honestly and daly consider.

I perswade my self, I have by the re fam flections I have made upon the Discourteir ses of these two renowned Authors, propale pared their Reasonings for the judgment, the ordinary sort of men, if honest. To such their Arguments must appear so frivolous as they will conclude these Authors down fee right Advocates for the Popish Superstiti may on and Cruelty, under the thin pretences for of defending, That a Successour to the try
Crown, by an ordinary and common right, equ cannot be Excluded by an Act of State ful Such a Successour, who (if he be not a Palac pist, yet) hath openly departed from on lar Church, in which he was born, and for he which his Father suffered Martyrdome; for and for the preserving the Peace of Three La Kingdoms, disdains to tell us he is a Pro testant; and neglects the direful imprecations of his Grand-father; though no in Curses are so operative as those of Parents upon their Children, upon weighty causes s

Root the most flourishing and prolifical here samilies, make their Root rottenness, and scour heir Blossom to go up as dust; Omnem altant stirpemque domumque.

Denai voi x jaiav Egirvues eise ronnav.

Juch.

And therefore I have caused these re-Rections to be Reprinted, if happily they stiti may conduce any thing towards a full inonce formation of my doubting honest Countrymen, in a matter so weighty; and conight sequently, towards the prevention of the eftate suffices of English Blood, in Wars, Mas-Palacres, and Martyrdomes, and of the lumles, violent, and bloody attempts to for he made for the Extirpation of the Reformed Religion Establisht amongst us by law, by the Romanists: And lastly, toment and Nation in Peace and Tranquility again, which are now most miseraby distracted, by the fears of a Popish Successour, and by the Doubts about Exduding him. H 4

If we did not doubt without reason the lawfulness of Excluding a Popul Successiour, we should have no reason to fear him.

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The Great and Weighty CONSIDERATIONS, &c. CONSIDERED.

Hatever is the subject matter upon which we exercise our Thoughts, or whereupon we make our Enquiries, doth not make the Considerations of flight and vain Men GREAT and WEIGHTY. A man of flender Endowments doth not commence to be Wise, as foon as matters of great Moment take up his But if he be of fuch a make, as ren-Thoughts. ders him capable of being in any degree Wise, he is affected with an ingenuous Shame, finding the matters too hard for his Capacity, and above his reach: He is displeased and dissatisfied with his own dark, indistinct, and confused Conceptions, in which he himself can receive no satisfaction: he suspends, and determines nothing, but that he doth not understand the matter, and reforts with deference to those who are wifer than himself.

But there is a fort of Arrogant Fools who trouble the World, make it difficult to under-fland plain Truth, confound the Notions of things

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things, blend things of remote distances in their nature together, or put one thing for another that have no affinity to each other; puzzle and

perplex the minds of the Weak.

These deserve the Indignation of the better fort of Judgments, who cannot but be empaffio ned while they see a great part of mankind abused to their hurt. By the villanous practices of some, designed to the endurance of the greatest milchiefs; and by a fort of filly Knaves attempted upon, for deceiving them into a permission of all the pretented evils to come upon them; who prefumptuously use their little Wit to ensnarethe Consciences, to perplex the Minds of the Multitude by Objections puzzling to the weak, by fuch Reasonings, as none but fools could think of and none but bold Knaves would offer to the World: Such I take to be every immodest man who will adventure, not from his Understanding, and therefore from his Will, and consequently his Interest, to speak things that have no consequence, and are not induc'd by the Laws of Reafoning and Discourse; that have a tendency to dispole men to scruple of Conscience, and make them doubtful and unactive against the evils of the greatest size that are design'd against them, and to neglect or refift the Counsels of God against themselves, and fatally fall under the defigned evils, notwithstanding they are provided of a just and allowable Remedy against them. There are, and ever was, and ever will be, to leir

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the trouble of Mankind, a fort of literate Fools (who will always obtain fome reputation with the stupid admiring Vulgar) made by Nature to little Understanding, and who have lost that little for want of using it; who by Books good or bad, it matters not much, become greater Fools than they could have been, if left to simple Nature; who by imperfect remembrances, and undue joyning of things more imperfectly understood, make most perverse Judgments in all things they are conversant about. And if it happen that by their Complexion they prove forward, and are opinionated of their false Learning, they obtrude upon the World their unnatural, monstrous, and incoherent Conceptions. And if they chance to mix their Discourses with passages of Holy Scriptures, and thereby entitle Religion to their Absurdities, they more powerfully amuse, distract, and abuse the Consciences of the common People, and perplex them with Scruples and Prejudices, and that fometimes against the only means of their preservation. And this calls upon, and urgeth the Charity of such to whom God hath given a better underflanding, to appear and come forth for the undeceiving and rectifying the Judgments of the most deceivable part of Mankind, and with just ignominy and scorn to beat down the assumings and prefumptions of fuch Pretenders and Smatterers in Letters; especially in such a Weighty Matter as this, when the poor people (if mistaken) must must be mistaken to their Ruine, and perish by the Deceit, if deceived; which, I hope, is scarce possible for very many to be, by this frivolous Pretender and Offerer of Considerations, which none but he that deserves our pity could think of; but for that he dares to offer them publickly to the World, and under the stile of [Great and Weighty Considerations,] he most justly deserves our Indignation, a private Scorn, and a publick Censure. For that purpose we will now produce him.

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HE begins his Confiderations with a Confideration and Recommendation of himself, and would fain prove his Honesty; for he was with reason conscious that this undertaking would render him more than probably suspected: He proves, as well as any thing he undertakes, and as well as it can be proved, That he is an honest man. This he would have the World believe, because there is such a thing as sincerity in the World; and for that there have been some men that have owned an afflictive Righteous Cause against self-interest, and the displeasure of a prevailing Faction: but we know the Cause that he Patronizes, is the most unrighteous Cause that ever any man of Front espoused: but that should not trouble us. But that which afflicts us, and is the heart-aking of all good men, is, That this Scribler with too much reason we know, presumes that the Brave men (whom he reviles

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viles for adhering to the onely means of the faving of three Kingdoms) with the Gross of the Nation, are designed to be subdued by a party of men whose strength the King in his prosound Knowledge and Wisdom best knows how to Calculate: but certainly this Addresser imagines very great, whatever he pretends, and that he is well backed by force. Otherwise he could not adventure publickly to despise the Interest of a House of Commons. If this Considerer and his Fellow-Conspirators had not some secret reserves of Strength, he would not advise the King as he doth, to Adhere to, and Govern with the House of Lords and his Privy-Council, and to lop off the House of Commons from the Government as an unprositable Branch.

In the next Paragraph he tells us, The Chiefest Principle and Maxim of the true reformed Religion in this Kingdom, is fully Epitomized in this excellent Precept, Give to every one his due. If there can be more nonsense spoken in so many words, it is this Patriot must do it; and you shall find him often performing what I have undertaken for him. And sure, after such demonstrations of his Honesty, and proof of his Understanding, you must take him for a True Patriot, and a sit Addresser of GREAT and WEIGHTY Considerations.

In the next Paragraph he undertakes to commend

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mend and allow, chide and and disapprove our leading Men; I believe he means of the House of Commons, but we want his Name; it's fit he should discover himself, before we can admit him to fit Judge of the Actions of the most excellent Persons of the late House of Commons. fwade my felf he would blush, (however immodest he appears in his Address) if he were drawn out and exposed to publick view under such a Character; we might spare him the Pillory, rotten Eggs, and Turnep-tops, which is due to infamous Libellers against Governours; for heisa man of fuch fashion (I believe) that he would suffer too much of Shame and Confusion of Face, (if he were but known well enough to be poin-) ted at) after we have done with him.

In the fourth Paragraph, he allows it is a glorious thing to establish the True Protestant Religion; but he would not have it established upon Quick-sands: neither would we, because it is impossible it should be so established; we would not have it depend upon loose accidents, exposid to Chance and Contingencies, and expect it should be supported by rare events, and morally impossible: nor to be left at Six and Sevens, a chance that is not upon the Die, and hope that things should out of their Course and Nature unite and combine together for its support.

That which is Glorious is so, because it is Excellent in it self, and difficult to be atchieved;

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and whatever is difficult, is to be obtained by unusual and extraordinary means: to deny or condemn the use of them when lawful, is to deny us the end; and is so far in truth from allowing it to be Glorious, that he doth not allow it at all.

That it is made difficult to support the Protestant Religion, we owe to the Popish Conspiracy;
and the design of this man is to make it impossible: to that purpose he requires you to lay aside
Humane Policy, which is the same as true Prudence (which is the onely Guide God hath given
us, and the onely Oracle he hath left us to consult in our Affairs, and is never repugnant (as he
would have it) but always conformable to the
Laws of God and Nature) lest we should be furnished with a Remedy against the designed mischiefs to us and our Religion.

To this commendable fort of Policy, the defign of the Bill will be made agreeable in the following Discourse. That we may admit the absurd Doctrines of the Church of Rome, we are required to abandon our Reason; and that we may more easily again fall unto her, we must (if we will be ruled by the Considerer) renounce our Prudence; and those that will not, must endure his slanderous Reproaches, with which he goes on to revile the promoters of the Bill of Exclusion, whom he calls Hypocrites, Fastious Spirits of the Fanatical Leven; that they make a Cloak of Religion to palliate black Designs; sierce Zealots, asting like

like the Rump-Parliament, Guilty of Antichristian attempts, repugnant to the Ordinance of God, and to the Fundamental Laws of the Kingdom; a few turbulent Zealots, assuming to themselves a Soveraign and despotical Power of Deposing the DUKE of TORK: and says, That they impudently assuments, to Depose Princes, and dispose of Kingdoms; whereas the Crown hath been always Hæreditary, and never depended upon the Suffrages of the Sub-

ject.

Since this bad man presumes to say so many bad words falfely of the Excellent Members of the late House of Commons, reproaches their Zeal for the publick Safety, most Heroically exerted in the time of the greatest Need, and most threat ning Dangers; calls their appearance for the support of the Protestant Religion established by Law, Hypocrifie: And the profecuting the Difcovery of the Hellish Plot, and the best means of preventing the Plot from taking effect, black Since, I fay, his Immodesty hathgiven him so much License, I wonder he had no more Scurrilities, especially since he is so impertinent as to call the Bill of Exclusion, an Antichristian Attempt, Repugnant to the Ordinance of God, (though God never yet made any Law or Ordinance in that Case), and the Fundamental Laws of the Kingdom; though no Laws of Men are to Fundamental but they are alter ble.

The Constitution of Government is indeed

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makerable by Law, but no Laws but are alterble by the Government; for the Government ws before Laws, and made and constituted most

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aign That the House of Commons assumes a Sove-Eof nign Power, he knows to be false; and knows too, that all the world knows he is therein a Falfary. What can be expected of Candour or Sincerity from a man of fuch Effrontery? And to the maling the Slander compleat, he joyns Despotical to Soveraign Power, as if they were the same; an instance of his egregious Ignorance, except he flatersthe King; and would fignifie to him that he hth Despotical Power, because he hath a Soveraign Power: and this commends him indeed for a true Patriot. A Despotical Power is such as Masters use over their Servants, that command what they will, because they will. Soveraign lower is exercised for the good of those that are governed; and the Commands that come from the Soveraign Power, are Laws that are deduc'd from publick Reason, as they are the publick Measures, and are always reasonable, or pretend to be fo.

No body ever affirmed, before this Addresser to the King, That it hath been the Ancient Custom of Parliaments to dispose of the Crown, or that depended upon the Suffrages of the Subjects; which he falfly and maliciously adventures to by, to misrepresent the most Venerable late House of Commons, whose Proceedings will ju-Stiffe

Stiffe themselves in true Story to all succeeding Generations, and will, we all hope, be second and out-done by the next; if the good People of keep themselves from being deceived by said Artificial men as this Addresser is.

But this is said, and truly, That a Parliament of the said is said, and truly, That a Parliament of the said is said.

which is King, Lords, and Commons, have ded and red, and particularly, a Parliament in the Reigno that most Excellent Princess Queen Elizabetha Mic Eternal Memory, (the wifest and greatest of the Princes that are Glorious for the Reforming the for Christian Religion) did declare a Power in them for the Reforming the for Christian Religion) did declare a Power in them for the Reforming the formal for the Reforming the Reformal for the R to alter the Succession, otherwise than of count ver it is by Law appointed: and most reasonable fur is; for no Government can want a Power to po bif ferve it felf, and obtain its great End, viz. the prefervation of the Community and the Polity elf it felf; and no less Reasons than these, require and urge the Use and Exercise of this Power to an Act of Parliament for Excluding the D. from the Succeeding to the Imperial Crown of Engand the In order to these ends, the Power of a Parliament is unrestrain'd, and unlimited; which this Continue is unrestrain'd, and unlimited; deration-Monger calls Scoffingly (Impiously and Interpretate Prophanely towards God, and irreverently to Ho wards the Government) Omnipotency.

In the next Paragraph, he produceth his first at Reason against the Excluding Bill. And by an he execrable Argument, he adventures to prove, We That

But the discent of the Crown is Sacred, viz. That Attainder in Treason cannot debar the next Heir

he fucceeding in the Government.

But if the Heir had died of that Attainder, the Argument had been spoyled. For cannot that ner that can inflict Capital Sentences, and de in ought to do it against all in subjection that igno acur them, Banish instead of Kill-fure he is no true the head to his Royal Highness, whatever he pregue for that he makes the condition of his pref mher nive Heir fo hard, That he must either Die or State Reign. A very judicious Advocate, and deserves very well of his Client, who will remember him, bled fure, when he comes into his Kingdom, for ope bringing him into fuch danger.

the Ibelieve this confidering Patriot shifted him-Polity aff in this Consideration into France, where they quit here Princes of the Blood, against whom no Per Ciminal Process can be formed, nor no Attainfrom der of Blood is admitted, to the purpose that the most enormous Crimes may not seem faults those that participate of the bloud of that lengthy Tyranny. But the better to disguise an imself, he criminates the Parliament, calls the y House of Commons in derision Cunning Politians, that would have a new Model of Governnent; he chargeth them with assuming a powstill to depose the King, and will conclude, because y me will, (and hopes the People will take his rove, Word for it) for no other reason in the world,

That

that we may as well Depose the King, as foreclose a Presumptive Heir, which he will call deposing him: for this Russian-like man will not submit to the common use of Words, and is at desiance with the common Sense of Mankind; and will say it, That it is as lawful to Depose the Possessor of the Crown, as to make an Act of Parliament for preserving the Life of the present King, by disabling the next Successor that brings it in danger: And likens the late House of Commons, upon the score of their Bill of Exclusion, to the Rump. Oh! for a Discoverer that would bring this man to Light and Shame, and thereby to Reason and Sobriety.

Cal

Upon this weak and flight colour of a Realon, ve fee in the next Paragraph how he lays about the him, with what vehemency and expostulation; has and yet in his magisterial Rant, the trisler could un no fooner name an extravagant Bill, but he thinks fo of a Box of Gilded Pills, which if he had been lately under cure by Mr. Hobbs his Doctrine of do the train of Thoughts, they could not escape 10 coming together. And yet this Thinking Ad in dresser is not altogether so happy in dividing and pe opposing, as in compounding. For he affirms, di that to go about to establish the Protestant Reli- de gion by a Bill to Exclude the Popish Successour, of is inconsistent with the Government, and is an to destroy the very Root and Life of Govern- the ment. But,

But, pray Sir, for the sake of Reason tell us; de poth the Government it self depend upon not the person that Governs? or is the Government at it self changed by the alteration of the Successid; on? may not Governments, for kind the same, the lave different modes of Succession? and are not the kinds of Succession, more than the kinds and ing, forms of Government? Can the Government be in the without a Power to exclude a Person inhabil ons, in Nature to support it, or of one Principled to the lestroy it? Can we imagine a Government ing which is of Humane Contrivance, to be without to Power to preserve it self; and an Authority, in Cases that threaten its Ruine, to interpose with apt Remedies for its preservation? That a Gofor, vernment made by men should be left meerly to out chance, and the contingency of Birth, whatever on; happens of inability in the Persons that come ould under the general Rule and Limitation of Succesnks fion?

Doth the Exercise of this power turn the Kinge of dom from being Hereditary to Elective? is there ape modifference between the inconvenience of Judg-Adding of the several Degrees of fitness in several and persons competently qualified, and the proceems ding upon evident notoriety to exclude one that deligns the subverting of it, and the destruction our, of those that are to be governed and protected is and hath incurr'd a severer Doom? I well hope there are very few in this Nation so ill instructed, that doth not think it in the Power of the Peo-

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ple to depose a Prince who really undertakes to alienate his Kingdom, or to give it up into the hands of another Soveraign Power: Or the really acts the Destruction or the Universal Ca

lamity of his People.

The Learned and Judicious Mr. Falkner, than whom there is no person of this Age with the Church of England in greater effeem; Who truly merits the high esteem of all men for his excellent Candour and Learning: In his Book called Christian Loyalty, cannot deny the right to be so upon those cases really happening, but is not willing to suppose such Cases can ever happen in Fact. He tells us, If any such strange Case as is proposed, should really happen in the World, it would have its great difficulties. Gr. tius (he tells us) thinks that in this utmost extremity, the use of such defence as a last refuge, at timo necessitatis presidio, is not to be condemned, provided the care of the common Good be prefer-And if this be true, faith he, it must beup on this Ground, that such attempts of ruining do ipso facto enclude a disclaiming the Governing these persons as Subjects, and consequently of being their Prince and King; and then, notwithstanding his Proposition (faith he) would remain True, viz. That it is not lawful upon any pretence what soever, to take Arms gainst the King.

All that Mr. Falkner offers in this matter, out of his commendable Care and Zeal to Peace and Government, is, to argue the Cases in Faction.

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possible, and that such suppositions may be the indue imputations of Factious persons against heir Soveraign: He thinks that Princes may have a Confideration of the Account they must give in the other World of their Government here: That they have a regard to their Honour and Esteem, and a Respect to their Safety; To the quiet and ferenity of their own minds, and will avoid the Diræ Witrices, and the Tortures of mind that attend Cruelty, and the Actors of great mischief, and by such Considerations as these

be contain'd in their Duty.

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utis But do these Arguments of his, that should hapreasonably, and ordinarily do, secure us against the Oppressions of Potentates, give us in this justure any Security? are these Considerations Diswasives or Incitements to a Popish Prince to at our Fears, and give reality to the Suppositions? To any under the Principles and Counsels that guide fuch a Prince already entred upon the Delign, and his Party obnoxious, these Considerations would urge him to proceed, and make our Calamity certain: These Arguments of his applyed to fuch a state of things, is like a Protestatio contra factum; and like the Sophistical Arguments of the Stoicks, who would undertake to prove a thing acknowledged and existent and present to be impossible.

How wild then and transported must this Patriot seem, who will undertake to argue the Bill guilty of the highest Iniquity and Injustice, Ar-

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raign the greatest and Best part of the Nation, adjure them to answer it at his Tribunal, challenge us (for so his Expostulations and Enquires of us doth import) with intentions to over-reach Providence; and that we despair of the justness of our Cause, or the Goodness of God. And he tells us, That God doth not want our Wickedness to

fulfil his Holy Will.

We answer: How far the Providence of God will affift us in this undertaking we know not. it is not new in the world for the most Righteous Causes to be unprosperous; we are onely to do our Duty, and leave the Issue and Event thereof to his All-Wise Providence. But we know, and are most assured of the Justness of the undertaking; and we have a good hope in the goodness of God, that he will succeed it, for that herein we are doing nothing that is evil, but fulfilling his Holy and Good Will: I mean, not that we are certain to obtain what we defire and pursue: But it is the Will of God concerning us, (who hath left us in the hands of our own Council, and hath not told us. That he will fave us by a Miracle) that we should be Loyal to our Soveraign, zealoufly love that excellent Religion and that excellent Government that his Gracious Providence hath established amongst us by Law: And also that we defire and endeavour by Law to disable (in the understanding of the representative of the Nation) a profest Enemy both to our Religion and Government, from getting intothe Throne; Throne; that he be not by that advantage of

Power, enabled to effect his purpose.

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But we are resolved we that will not call that Defign Evil, though it do not fucceed; nor think that we are not doing the Holy Will of God. though we should be unprosperous therein, and without fuccess. If there was an Oracle to Confilt, we would not know what the Success should he lest our Virtue should lose its Glory. No brave man, but would despise all Auguries, when heis to contend for his Country, and things more precious to him than his Life. Sortilegis Equant dubii. This false Patriot takes Sanctuary in his Revolt from publick Interest; and he thinks he is swimming to Shore with his Plank before a Wreck, and will fly the Danger before it approaches: but we will do our Duty, weather the Storm secure of the event: for the goodness of the Cause makes us hopeful, and we will Triumph in our Integrity though disappointed. Of any other Will of God, save what is his Will for us to do, as Citizens, Souldiers, or Martyrs, we are not fo follicitous to know.

The Noble Roman, when advised by his Friend Labienus to Consult the Oracle of Jupiter Ammon, as to the event of the War in which he was

then engaged, Thus answered him,

Quid Quæri Labiene Jubes an liber in armis Occubuisse velim potius quam Regna videre? Annoceat vis ulla bono? fortunaque perdat Opposita Opposita virtute minas? Laudandaque velle Sit satis? Et nunquam successu crescit Honestum Scimus & hæc nobis non altius inseret Ammon

I do but right to my Country-men, to bear my publick Testimony, that their generous and godly Resolutions are agreeable to this Noble Roman. But that done, I will calmly tell him. That we are in a Legal method, allowed by the Government, contending for its preservation by the Bill of Exclusion; and that most certainly he can have no right against a Law (for such it will be, when that Bill hath the Royal Assent) to any thing that he shall forseit thereby: And whether such a Law is not most righteous, let God, Andient and Law is not most righteous, let God, Andient and Law is not most righteous, let God, Andient and Law is not most righteous, let God, Andient and Law is not most righteous, let God, Andient and Law is not most righteous, let God, Andient and Law is not most righteous, let God, Andient and Law is not most righteous, let God, Andient and Law is not most righteous, let God, Andient and Law is not most righteous, let God, Andient and Law is not most righteous, let God, Andient and Law is not most righteous, let God, Andient and Law is not most righteous, let God, Andient and Law is not most righteous, let God, Andient and Law is not most righteous, let God, Andient and Law is not most righteous, let God, Andient and Law is not most righteous, let God, Andient and Law is not most righteous and let God.

gels and Men Judge.

And here it will not be amiss to admonish this Patriot, That no man hath a Right to any thing from God and Nature (to use his Words which the useth, but doth not understand of what Import and Value they are in this place) for the Rights of Property are of positive and civil Appointment and Institution. No man can have, or is entitled to any thing, but what, and as the Law allots it to him. They design what is Right, what Wrong, and what is Injury and Thest; and the Law of God, both in the Reason and Nature of man, as well as by express Revelation, forbids it. Nec natura potest justum secrence iniquo.

Men make Governments, and God Commands us to obey them; yea, God Commands

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is in our Nature, to form our selves into Ga-For that Mankind cannot toler vernments. bly subsist without them. What is greatly con venient, and promotes the happiness of men' therefore seems to be Commanded, and thereby a positive and affirmative Law of God in Name is declared. What is or would be greatly michievous to mankind, if generally permitted, itherefore understood by us prohibited. Mischief declares the thing forbidden, and is the indication of a Negative Precept, or prohibitory Law. The pleasure and satisfaction of mind that men take in being beneficent and agreeable to, and deserving well of their own kind: The remorfes, shame, fear and regret that men necessarily fuffer from the sense of their own actions, when they are offensive, unequal and unreasonable, are the Sanctions of the Laws of Nature, and are truly the Rewards and Punishments of God in Nature.

So that Anarchy, which is the most intolerable state of Mankind, a state of War and Violence, unreasonable Passion, and unbounded Appetite, seems to be the most forbidden thing by God in Nature.

But Government, because it makes men equal and reasonable, just and peaceable, kind and beneficent, or finds them so, encourageth them to be so, and protects them in being so; seems to be the most principal Institution and Appointment of God in Nature, for that it is recommended to

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us by all that which conduces to our happined non J And thus, and for this reason, are Kings and Go vernours said to have their Authority from God. and therefore Government is called 518 diameni, Rom. 13.2. Gods Ordinance. But the forms of Go. vernments, the Persons of the Governours, the Order of Succession, their respective Powers and Ministries, are of Mans appointment: and agree. able hereunto, Government is called and parting xing or a Humane Creature, 1 Peter 2. 13, 24. to which the Apostle enjoyns us to be Obedient for the Lords fake, and in Conscience of our Duty to God.

Agreeable hereto is that Nobl : Tradition amongst the Jews of the seven Precepts given by God to the Sons of Noah, that is, to all Mankind, for from him we all secondarily derive, in which the great Titles of the Law of Nature are declared, and to which all the Nations of the World were obliged: one of which is De Judiciis. The words of the Precept, which is the Seventh, are no more, fignifying that the Law of Nature, or the Will of God in Nature, doth command us to live in Politys and under Governments. Law was given or declared to all Mankind, when they were in a State of Nature, before Governments were constituted; and by that Law of Nature, obliged to form themselves into Societies, to enter into mutual Obligations, to stand to and abide the common measures of Law, and to affilt and submit to the Sentences and Decrees of common

plegiance that were taken in the world: but when a single person was entrusted with the executive power of Laws, they swore this Allemance to him. For in all regular Governments as it is in this of ours) the King commands nothing but according to the Prescript and Formulas of Law: And the whole business of Government, as between those that are to be Governder, is making Laws, and executing them in a due

Administration of Justice.

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As Corollaries to what is faid, I shall add, first. That Mercenary Guards are very unnatural to Governments, as they feem, upon the foregoing Resons, to be instituted and appointed by God in Nature, which receive conformation from the Indition and Doctrine of the Jews (the best instructed Nation in the world in the Mind of God) for that the whole body and power of the Government or Polity are bound to see the Law, and Refults of their common Judicatures obey'd, and are amply sufficient for that purpose. So that the head of the Polity, by the posse populi, being most powerfully instructed to execute the Laws, Mercenary Guards feem intended and defigned, by those that imploy them, to execute matters illegal and extrajudicial; or at best they make avery hard case upon the people, that they must . support a great charge, and pay a great price for jealousies and fears.

Secondly, That by the natural obligation of the

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the ancient Oath of Allegiance, every member of the Polity is bound to refift and subdue all a trajudicial Forces, riotous and routous Assemblies.

But the nature of Government, and its me original, hath been prejudiced by an unhappy stake that hath long fince invaded the world men that understand nothing but Words; and Grammar-Divines, that without contemplating Gods Attributes, or the nature of man, or the reasonableness of moral Precepts, have unders ken to declare the fence of Scriptures; and infer that the Soveraign Power is not of Humanela stitution, but of Divine Appointment; because they find it there written, that by him Kings Reion; imagining that when the Scripture faith, God commands, or doth this, that God commanded it by express Words, or doth it by an immediate position of the thing done. Whereas in Nature his Commands are nothing but the natural Light God hath bestowed upon Mankind : Likewit Gods doing a thing is only the course of natural and second Causes, to which, because God gives the Direction or Motion, he doth both, and faid to do all that is done.

Besides, all the Precepts that God gives us that are agreeable to the Law of Nature, must be understood as Nature and Reason doth direct. Videtur Lex Dei idem distans quod natura, ita accipi quomodo ipsa natura accipiendum monstrat, nisi addatur aliquid Expressius; Grotius Comment. fol.

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In. The Laws of God, that confirm the Laws of men, innovate nothing but a new obligation mobserve them (but only) as commanded and intended by those that made them. All humane Constitutions and Governments must be subservient and obsequious to their own intentions. Omnes res conditie famulantur vite humanæ: Evew Form of Government is of our creation, and not Gods, and must comply with the safety of the People in all that it can, without its own difblution: and was never intended unalterable. grat least inflexible, but was intended and made der refervations, reasonable exceptions of unbrefeen accidents, and rare contingencies in humane Affairs. And the Law of God, that comes in confirmation and establishment of humane Institutions and Laws, binds onely according to their natures and intendments.

How unreasonable therefore are the Tragical Etaggerations of the Considerer, making it the most heinous wickedness, and the most crying injustice, to alter that which in its own nature is alterable, and by an act of the Government to exclude the D. from the Succession, as a person unsit and unsate to be entrusted with the Government! (though in the general order thereof, he was thereto designed) besides that he hath forseited that kind of right that he had by that general appointment.

Is this, faith he, the way of establishing the Protestant Religion? he saith, this is exactly to

follow the footsteps of that Monster of Ingratude, the wicked Jeroboam, who after God of his infinite goodness had raised him from nothing, and established him Monarch of the ten Tribes of Israel, yet was he so mistrustful of Gods power in preserving his Kingdom for the future, that he thought nothing could secure it but his own

accurfed Policy.

Our Considerer seems to have a high value for Rule and Domination, otherwise he would not have called the advancement of Feroboamto rule by Usurpation, an effect of the infinite good. ness of God. But these words were put in, to m that story of Feroboam parallel to our case: and he intends thereby to remember us of the little power that the reformed Religion sometimes had, perhaps in the time of Queen Mary; and to charge upon the Protestant Religion, and reproach it with a Revolt and unjustifiableSchismatical departure from the Church of Rome in the time of Queen Elizabeth, and the acquiring and possessing it self of the Government: And now, behold the man! now you know him and his Religion, and how fit he is to offer Considerations for the D. against the Bill.

But shortly, to destroy his parallel, he may know, that the Reformation did onely affert and reassume the Rights of the Crown usurp'd by the Bishop of Rome: We did reform the Religion of our Church to primitive Christianity, from which the Church of Rome had seduced us; but

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therein we used no other power than what belongs to every Church to reform it self: we were never of right and duty subject to the Church of Rome, she never rightfully had any Authority over us, and therefore we could not schissmatically revolt from her; nor are parallel at all in this to feroboam, though this man will compare us to him, and thereby skilly charge us with monstrous logratitude to God, and accursed policies; because we will not again give up our civil Rights to the Tyranny of Rome, nor lose again the true Christian Religion in the Superstitions and corrupt Doctrines of that Church; and because we will not forbear to use that power which is lawful to

every Government.

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Except this be his meaning, and he himself a Papilt, he might with as much pertinency have told any other story of Feroboam, or of any other of the Kings of Israel and Judah, in the Books of the Kings or Chronicles; or of Beltebazzar or Nebuchadonozor, Zenacherib, Ahasuerus; or Holofernes, or Antiochus, or any other King or Name in story Sacred or Prophane. all these he could not have found out any thing more unlike to have compared with us, to have remarked himself for a man of great Considerations. For Jeroboam corrupted the true Worship of God to support an usurped Crown; but the design of the Bill against which he declaims, is to support a lawful Government, and the best Religion by a legal AR of that Government.

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So that we will invert that Wo which he produce the against us out of the Prophet; Wount to him that buildeth his house by unrighteousness, and his chambers by wrong, into a Wo against himself. Wo unto him that putteth evil for good, and darkness for light, and casteth a stumbling-block before

his neighbour.

But in what follows of this Writer of Confiderations, I doubt me whether he doth not at the part of a scorning Atheist; for that he would perswade the world from all care and regard of Religion, by telling us, it is able to shift for it felf, it being the work of Gods own hand. His atheistical scorn and low valuation of the true Christian Religion, is further very notorious and remarkable, for that he makes the establishment thereof amongst us to be such a like work of the Almighty Hand of God, that established Jeroboam in the Kingdom of Israel. O thou Infensatus Galata! to return thy own Exclamation which thou usest against thy own honest and difcerning Country-men, upon thy stupid self: For who, I pray you, but a senseles man, would compare a providential permission of the revolt of the ten Tribes for the fins of David, and the fins and oppressions of Solomon (to which the people were prepared by the exactions, oppressions, and riotous Reign of Solomon and his Succeffor Rehoboam) to the work of the Reformation, which was the delivery and restoring to it felf the Gospel of Christ, and his true Religion, (which

which was spoiled and depraved by the Church of Rome) for the benefit I doubt not of all the Ages of Mankind to the end of the World; 27 gainst which the Gates of Hell shall not prevail; and which we in dispight of the Roman Successor

shall see yet flourish in this Land.

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But we must not expect, though God did first, plant his Church by Miracles in Nature, and demonstrations of the Spirit of Power, by the wonderful Gifts of the Holy Ghoft, and by the Spirit of Glory resting upon the Primitive Martyrs of the Holy Faith, and did restore the purity of the Christian Faith by a Miraculous Providence and the Spirit of Martyrdom, which we are now peacefully and Legally possessed of; I say, we have m reason to expect Wonders for our preservation, when it feems to be in our own hands: Nor ought we to subject the professors of the True Religion again to Slaughters, Fire and Faggot, Tortures, Inquifitions and Massacres.

Let us not think that our Government, as it, lies in History, and our Laws in Books and Parliament-Rolls (which will eafily fuffer an Index expurgatorius, and make no complaint,) can defend us and it against the Instruments and Engines designed for its subversion in the Plot, and the powers that have been long addressing to that purpose, and are now at leisure to execute. what we know is designed against us, better than we can make out and discover. This Expression, I know, would scarce pass for sense in any other

Age

Age or Matter, but we live in an Age of Mystery and Prodigy, producing things monstrous and unnatural, and our Language must be agreeable to

The True Patriot proceeds and affirms, That

the things we speak of.

it is an unwarrantable Attempt, and a point without example or president, to Depose a Prince for not complying with his people in Religion. I appeal to all that shall read him, whether he appears to be a man of Reading enough to warrant him to pronounce a general Negative in this matter? But by this time there is nothing foextravagant but you will allow agreeable to the man. I believe immodesty is the unhappy Vice and Fate of his Nature, for no man ever arrived to the like Degree in it before him: you must not ask what he means by a point without example or prefident, or why he puts us a point that is not in our Case, and still will be talking of deposing a Prince; for this man oweth no account of his matters. But, thou False Considerer; So

the Case for half I am worth.

But pray why thus impertinent? why dost thou send us to Asa and Maachah, Jeroboam, Rehoboam, Jehu and Joram, Asa and his Mother, and Azaria? we know little of the Constitution of the Jewish Monarchy, save that God after the Jews had rejected his Government, and desired a King, kept some remains of his Theocracy over them, which he administred by his Prophets, whom

Loyal I am, That I would not have that point in

whom he noint King fides, every Laws, and vernments warranted or Conden Fall to OI know, th he reproac we stand ferve eith preferving they destr Neither on, make ding the France:] to murder cute a S

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m he Commissioned to Exauctorate and At Kings. Their Histories are short; but be every Nation is to be governed by their own s, and there are as many kinds almost of Goments as there are Governments; we are not anted by their Presidents, nor to be Justified ondemned by them; but we must Stand or to our own Laws. But let this Patriot w, that our case will never be Cromwels, (as eproaches us,) and we will not, neither can hand in need of any Apology that would be either for the Rump or him; for we are erving that Government and Church which

destroyed.

either will we, O man of finall Confideratinake use in our defence of the Papists excluthe King of Navarr, a Protestant King in ce: No more than we will allow the French urder a Protestant Minister, because we exea Seditious Traiterous Roman Priest: No than we can allow in others, or justifie in selves to prosecute dissenting Protestants, se Principles are peaceable and obedient to ernours: Because we duly sharpen our Laws, exact the Severity of them against the Pathe fworn enemy to all Religions but their and to all mankind upon the score there-How grofly therefore is that of the Apostle pplyed, Whosoever thou art 0 man that judgest ber, &c. For doth a publick Executioner r the Judgment of shedding mans Blood, for K 3

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executing a Sentence against a Murderer. Thou man of Observation mayst possibly know what

kind of Beafts we muzzle and tye up.

He observes for our Imitation, That the Ortho dox did not Depose the Arrian Emperours : we ought undoubtedly to imitate them therein; for that no man, much less a Prince, ought to lose any right for a Speculative Error, or meer mif-belief But onely for wicked practices and opinions that promote excite and encourage them. But it is also very observable, which the Considerer, by his mention of *Julian* the Emperour in this place. gives me occasion to offer: That the Behaviour of the Church towards the Pagan Roman Emperours, was much different from that which they bore to Julian, who succeeded to Christian Emperours, was educated a Christian, and some rimes bore a place in the Church: for whereas the Apostles had enjoyned the Christians to pray for the Pagan Emperours, though actual Persecutors of the Church; yet the whole Church did Curse and Anathematize Julian with an Anathema, quo Deus rogatur ut aliquem è medio tallat, In Julianum cum defectioni adderet, machinationes evertendi Christianismi, usa est Ecclesia isto extremæ necessitatis telo, & à Deo est exaudita. I will not trouble tius in Luc. Cap. 6. Vers. 12. the Reader with more Quotations to this purpole; the Authority of this Great man is more than ten Witnesses. And for what he lays down gonerally, that the Orthodox did not Depose the Arrian

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Arrian Emperours: I must remember him out of Socrates the Ecclesiastical Historian, lib. 2. cap. 18. Gr. when the Souldiers of Constantius the Arrian Emperour were by his command fent to enforce them to become Arrians, they took Irms in defence of their profession of Religion; how justifiable therein, I will not now discourse. but this may be faid, that the Christian Religion with indifferency to all Sects, was made the Reigion of the Empire by Imperial Rescripts, and Christians had thereby a civil Right to a free and undisturbed profession of their Religion in their several Perswasions: For Constantine the Great carried to indifferent an hand between the Contending Parties, that he endeavoured to make Peace rather by filencing the Disputes, than by determining the Controversie: Worthy of the imitation of the Guides of Christendom; and the onely means of freeling the Reformed Religion from being depraved by the Jargon and Gibberish of the Sectaries! boil's

If the Crown should devolve upon the Roman Successor, it would require consideration, whether we could justifie the Dethroning of him; though the French Papist could not be justified

in rejecting the King of Navar.

But this untrue Patriot thifts his Cause from what it is, to what it is not, that he may have some colour to inveigh against the true Patriots, far more excellent and righteous than himself; and have some umbrage to betray the best Reli-

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gion and the best Government, while he pretents

with false Hypocrisie to support them.

But I am glad to find in him at least one grain of Sense and Honesty; he saith well (to do him right) that is the best Religion that gives every one his due. But he must consider farther, to the confusion of the Cause he Advocates, That to give every one his due, is to administer De fence to the Innocent, and by authority of Law to subdue the aggressors of Mankind, how great and mighty foever they be; for they that are mighty Offenders, ought in proportion to be mightily punished: Fiat Justitia therefore, ashe faith, Ruat Cælum: for, to punish, much less to lay a restraint upon evil persons, is not to do evil that good may come of it; which he would impute to the proceedings in Parliament against the Duke, for which he must be self-condemned, for I cannot take him for a German Anabaptist.

And now we find this Considerer complaining of some Pamphleteers, that write ridiculously sophistical, and unreasonable Reasons; that tell stories (he saith) of Edgar Athelia, William the Conquerour, Arthur Plantagenet, and King John; that write Antichristian and Fanatical Logick, never heard of, until the Spirit of Belial revealed it to Oliver and the Rump. I believe, if there he any such Pamphlet, this Pamphleteer is the Author of it, or some of his Complices: to the purpose that there might seem some one worse than his own; and that he might be able

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end to quarrel with, and confute, and do advantage whis bad Cause by some worse Reasonings than grain he would seem to be Master of, or than his him Cause is capable of, which is not capable of a

good one.

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But what he fays cannot possibly be true of aov Pamphlet; but rather than he will not be Chat fandering, he will flander himself, and belie the Devil: For observe, he saith, they use Fanatical logick, and Antichristian Logick. The true Fanaticks, being impatient of the restraints of Reaon, and to be confined to fober fense, call Logick and Reasoning by that which they would kem most to hate, Antichristian. The true Anichristians and Papists, being impatient of the light reproof and discovery of Reason, call sound Reason Fanaticism. But our Writer is so vengeancely angry with reasoning, that with the fame breath he calls Logick, for the fake of reafon, Antichristian and Fanatical too; and renders himself suspected of being an Antichristian Fanatick.

And yet any one may fee, that it is not the thing it self that he is thus angry with, but the name of Logick that he thus exposeth; for what it is he knows not, he seems to think it comes by Inspiration, and that there are two sorts of Legick; one good, but he is not acquainted (for all that appears to us) with the Spirit from whence that is derived; and another bad, which, he fays, is inspired by the Spirit of Belial; where-

accountable Transgressor.

No reason can be given of him, why he should to with fo much feeming earnestness concern him if felf to perswade the people to abandon to an we utter neglect those things that of all others are we of most value to them, their Religion, Govern ment, Lives, Liberties and Estates. To perswade les a whole Nation to lay violent hands upon them have selves, to cut their own Throats, to burn them- Al felves alive and their Houses; and to destroy he themselves, their Wives and Children, Bodies and his Souls too, for conscience-sake. That there can be a subject not subject to Laws; and that of he fences that cannot be rated, because their mischies are infinite, for that very reason must not be puof the most heinous nature, to punish the Offen der with a diminution only in his power to do those evils which are most notoriously by him defigned, and will be effected by means of his own making and causing, if he himself should relent

one elent and refuse to execute them. If in this nsu ge of License, immodesty could entitle any man with ope a son of Belial, our Writer of Consideratibut in might fairly pretetend to it, who is immothey est for impudence sake, which spends it self in g to raste, and cannot essect any thing but the expo-ure, ag it self. In saying this, I should think my lef of very severe, but that he hath published his eter wa shame; and if I would, it is not in my powun to cover it.

But he hath not shewed the worst of himself ould be, he attempts further upon the Understanding im the People; he will have us believe that we on we Allegiance to the Presumptive Heir; that are we have as many Kings as Princes of the Bloud; ern and that a Son hath a right to his Fathers Estate rade before he is dead: For the probable Successor can em have no more right to the effect of the Oath of em- Megiance, than the eldest Son to receive the roy Profits of his Fathers Estate without his leave in

is Fathers Life-time.

If this Gentleman's Father had had any Land, of he would have understood the difference between ies is right to the Land after his Father's Death, pu- and his hopes and possibility onely to have it duin highis Father's Life. The word Heir is joynen with Successor in the Oath of Allegiance, to do signifie, that it means Heirs in the proper sence, im which is such that succeed to the Inheritance; his and not such that are in expectancy or possibility of having the Inheritantce, who are improperly and

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and equivocally so called. And though the the ally is so plain, that every man as well as the Land release yers agree what is said; yet my Lord Cook, for all saying the same, is called by this Gentleman, me is Silly and Ridiculous, Fallacious and Imperiation nent. App:

The Lawyers tell me, that it is a Rule in the lear Law, Non est hæres viventis; that is, No man effe t can have an Heir while he lives; 'and they like. mar ways fay of all the Regulæ juris, There is not ever one of greater extent and rule than this; that in it hath governed Ten thousand Cases near upon He in the Common Law; and they withal affure rela me, that notwithstanding this man (amongst o in ther civil terms) calls the Lord Cook Fallacious, Pro they firmly believe, if a Fee had been offered to him of the value of his Estate, which is about 200000 l. he would not have figned an Opinion if with a Videtur to the contrary; but he is refolved that all Mankind shall be mistaken, and he will call their reasonings in this matter what he pleaseth; New Machiavillian Logick, a word that dishonestly he took up, on purpose to expose the Bill to the Vulgar, imagining in his profound Confideration, that some of the Multitude will, upon the hearing of Machiavillian, fall thereupon into an unwitting diflike of the Bill.

Nay, he will conclude an Heir Apparent to be an Heir, because he could not be Heir Apparent unless he were an Heir; when the word Apparent and the word Prefumptive more espe-

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the ally joyned to Heir, is a term of Abatement Law a Negative, and distinguisheth him from being a ok, for cal Heir, and speaks him no Heir, but onely eman, one in a near possibility of being so. But, says peni cit is a manifest contradiction for one to be Heir Apparent, and not to be Heir; as it is to be a in the learned man and no man. Prius est esse, quam man Metale. I wish we had his Name, that we may like mark the most absurd reasonings by it, for the on werlasting honour of this Pretender to Reasothat ming and Discourse. We all know that the word upon Heiris a Name to design a person under such a flure relation and respect, and imports nothing of enflo tity; and we may use our own abstract Terms ous, properly or improperly, and without any corred to spondent reality, to an equivocal sence.

But he adds Profaneness to his Levity, and as if the Holy Scriptures were writ to fo trifling a design, as to be an Oracular Dictionary, and Infallible Nomenclature; he tells us how the word Heir is used in Scripture, when the holy Writers formed their Language by the vulgar Idiomes amongst the people of the Jews, and never intended to write Law-Cases, much less to declare the Common Law of England, or imagined that their stile should be produced to expound our

Oaths of Allegiance and Supremacy.

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But now, thou vain Considerer, wilt thou hence conclude, that the Duke of Tork is Heir and Successor? That we now owe him Faith and Allegiance? that he is already in the Throne,

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and that this Bill, though it pretends onely miles

foreclose him, doth truly depose him?

It is insufferable, that this man should impute ule b to the House of Commons, and the best People of England, Diabolical Fiction, the worst of all fefare Suitical Equivocations, and of endeavouring to make a colour to their perfidious and perjurious dealins. for these reasons onely, because we will not be lieve, or take our felves to have sworn Allegance to the Duke of Tork, when we swore it to the King: Because we will not allow that a Parliament of England, which is the King, Lords, and Commons, have no more to do withour Government than the Pope of Rome; or that 80 the Pope hath as much power to depose one of full the Kings, as the Parliament hath to punish a mol obnoxious Subject: This he dares address to the King, and publish to the World.

He proceeds to prefume and tell us, that this at least must be granted, that whosoever is by Bloud next Heir to the Crown, we are by our Oath obliged before God to bear him Faith and true Allegiance; nay, to defend him against all attempts, until he is difinherited by Act of Parliament; and therefore, fays he, what foever we do against him, before this Act be fully established, is a violation of our Oath, and therefore the very attempt of voting and passing this Bill, makes the actors and abettors Perjurers before God and

the World.

Sure it will be allowed, that this Gentleman is mistamilaken; fure he doth not intend to speak Treabut hath a way of speaking which he will put by himself, and will make Words stand for ope what he hath a mind to: which Will and Plea-The fire of his, this peremptory absolute man thinks with himself not bound to explain, though to save Neck, if he should be Indicted therefore of Treason, which I desire he may, and Arraigned eg. to, for the better clearing the matter, if it be posto ble, how we are now bound to bear Faith Par and true Allegiance to the Duke: But he will ords, somer be Hanged, than make out how a thing our may be done Lawfully, which is not Lawful to that go about : That the Duke of Tork may be lawe of fully Dif-inherited, but the Voting and Passing of of the Bill must be Perjury. May not he that is the bound by an Oath to pay money, defire a release from the Debt without Perjury? Cannot all civil this Debts, Duties and Contracts, though confirmed by by Oath, be discharged by the Interested perfon, to whom the Duty is to be performed, and for whose Benefit the Contract is made? May all not Kings, by renouncing their Governments, ar make the Oath of Allegiance cease to all effects of Obligation? And cannot an Act of Parlament that shall disable a Successour, equally prevent it from passing any Obligation upon us?

But shortly to explain of what Import, and for what reason the words Heirs and Successors are put into the Oath of Allegiance: and it is this,

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That in case of the Demise of the King, and the Devolving and vesting of the Crown upon the Heir and Successor, the Oath that we took to the Predecessor, by virtue of those Words laies hold upon our Consciences, and obligeth us to him from the first minute of his Reign, but not be fore; and so we are not one minute free from the Bonds of our Allegiance. This being the scope of the Law that requires it, and of the Oathit felf, it must likewise be by that interpreted; for finis dicendi est ratio dictorum, and an Oath doth not oblige as this or that man would interpret, neither according to the vulgar or technical ule of the Word, but in such a sense as is adæquate and agreeable to the Intent and End of the propofing and requiring it.

But by what is faid before, it appears that we are not yet under the Obligation of that Oathto the Duke, and that it is in the Pleasure and Power of the Parliament, whether we ever shall be; our Comfort is (whatever he thinks) that there is a great difference between Hopes and Enjoy-And further, it appears that the Heir Apparent is but equivocally, and in a less proper sense so: and yet this Considerer (who if he be not a perfect Atheist, and serves a turn in this Paper, must be a Papist in his heart) according to the Modesty of the Gentleman, chargeth us with Jefuitical Equivocations in the Oath of Allegiance, while in the mean time he is equivocating the King out of his Taro 12, shifting the Duke into his

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his place, by an æquivocal Abuse of the word: the coursest slight that ever was used by any Hocus Pocus, or any Pretender to Legerdemain.

And yet upon the Confidence of these weak and mistaken Reasonings, he presumes to arraign the House of Commons of the greatest Injustice and Iniquity, and would have us apprehend Slavery the Arbitrary and Despotical Power of Parliaments. The loss of all Security either of Property or Liberty, by a prevailing Faction of Parliament; which he will be able to effect at the ame time when he can perswade us to dissolve. the Polity, and exchange the best and fafest Government into an Anarchy. To be without Judges, for fear of unrighteous Sentences; and without a Power of Legislation, for fear of Laws But it is not a new thing for obnoof Iniquity. xious Criminals and Out-laws to turn Rebels against Government.

What this man is, and what the Cause is he Espouses, is declared sufficiently, in that he hath no better ways of Advocation and Defence, than by Opposing and Reviling the Government it self; and he that dares revile the Government,

would, if he had Power, Destroy it.

In that he calls the major part of the House of Commons a Prevailing Faction, I challenge him Guilty of the Highest Treason, of a Treason not onely against this Government, but of a transcendent Treason, of a Treason virtually against

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all mankind, for that we cannot subfift without he Polities, and no Polities can subsist but by dese As rence to the refults of the Governing Power, which is Interpretatively in the resolves of the mer

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But he proceends to question, whether, by the buth Constitutions of this Government, the Parliament can extend their power to shut out the Duke from succeeding to the Crown; for admitting (he means) That it is Just, which we will not accept of as a voluntary concession of this men Considerer, (for that it doth appear not onely he Just, but highly necessary, to exclude the Duke by Bill) he will then draw it into question, When ther there be any competent power in the Government for doing a thing not onely just, but ab folutely necessary for the preservation of the Hi King and Kingdom? Whether there be any Subject too great for Justice, or any private Right that is not governable, and may not be ordered as to the Legislature shall seem necessary to the prefervation of the whole? Whether that which is properly the Right of the Community (for fois the Succession) may receive no alteration in a fingle instance, for the Weightiest Reasons? and whether he that declares that he will not Govern, but Destroy, and doth virtually renounce the Government, may not be left out of the Succession? This is the true state of the Question; and the Question thus stated, gives its own folution; And who, except those of the

[165]

on he Conspiracy, do not so state it, and allowit? efe As to his Question. Whence the Parliament er, knives their Power: let him know, that the Parlithe ment derive their Power and Authority from the me Original the King derives His: The King the 14th not His Power from them, nor they theirs 14th 10th the King: They both derive their Authority the from the Consent of the People in the first Conad Atution of the Government, either tacit or exress, or by their express or tacit Consent, in the this mensible, and little, or great, and more remark-ely ble alterations that the Government hath sufke fred in the course of Time.

he. The King can make the Parliaments Power no geater than it is, nor they His. Though true ab itis, he may put an unlimited Trust reposed in the Him, into Stated Laws, and Govern by Counthe sestablished into Laws; which is not to alter or the His Power, but to make it more Safe and as Wife, and impeccable in the exercise of it. may ascertain the indefinitness of His Power, that tmay not be abus'd. And that King doth best provide for a happy and wife Administration of is Government, who leaves the fewest things to ortuitous resolves, who reduceth his Prerogative to the measures of Common Right, and makes the Kingdom secure and safe, by leaving the Succession less Capacity and Scope to do mischief.

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It is mostly incumbent upon his Sacred Majely to secure the Government committed to his

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Care, and keep it upright, and steady upon a sown Basis, and to preserve all things in a due and Lay Legal Course: To watch to prevent all mach an ations against it, and such as would destroy and subvert it; and by his executive power of the Laws obtain to us the ends of Government, that we may live quiet and peaceable Lives in all Gods an ness and Honesty. For the sake of this High Trust and the Dignity of this Office, his Person is more and Sacred and Inviolable.

The King and his great Council providing for the establishment and security of the Government in their proceedings are not tyed up to forms of Judicial proceedings; but are to act upon such inducements, and in such methods, whereby the Wisest men govern their affairs; in which they are at perfect Liberty, and not under the restraint of Laws. They cannot do unjustly, whatever methods or means they use, that are prudentially and morally necessary to this End.

This power can be no more wanting in Governments, than we can be without Government: That which establishesh the one (which is the Law of God declared in the Make and Frame of Humane Nature) affirms and allows the or

ther.

By the Authority of this Law of God so declared and promulgated, as I have told you, do Kings Reign, and Senators or Princes Decree fuffice. By virtue of this Law, and in Obedience to it, is this Bill fram'd (against which this Considerer

er declaims like a speaking Brute.) From is Law of God, the faid Bill when it passeth into and Law, will have its Approbation, Sanction and ach abliffment.

and But against this Bill, with his accustomed aw ath, Candor and Modesty, he doth Object, at we let if such an Authority shall belong to the Parodf ment, as to disable one Successor upon such inmore int some time or other may be corrupted by a ing, and by mercenariness comply with him to g for Lithe Succession of the Crown to a Foreigner. ment all well enough know, that this Bill is de-ms of med to keep out the Tyranny of France, or at fuch of the French Tyranay: But for this I leave y the King to reckon with him and the Pensioners y are the late long Parliament.

int of The Gentleman continues to add the story of r me bab, contriving to possess himself of Naboth's y and nevard, by causing him to be falsly accused of

apheming God and the King; by which, if Go Re, by the Jewish Laws Abab had been Justly ment utiled to it as a Royal Escheat. But if he had is the theen as stupid as a Block, he had not mentione of a this story, which is a president and an adne of gd case against himself; who, but a Line bee, had so vilely Blasphemed so great a King, a declas Igreater King than Abab, though the Parliaou, to ent divide some Authority with the King in ee Ji Government: But what were the Constitu-

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lience as of the Jewish Monarchy, this Writer of Confiderations. fiderations, I am sure, knows no more thank that Foot-boy. But let him know, that the Romified by gion is a Blaspheming God; and to bring the king, it Life in danger, is worse than to Blaspheme him what wise Work this Considerer makes; when he shooth, he would argue, That the Duke of the cannot be shut out of the Succession, no more than Abab could take Naboth's Vineyard from him in the succession.

Ahab could take Naboth's Vineyard from him in In The man of Weighty Confiderations tells by in the next Paragraph, That God was incented appropriate Esau for selling his Birthright; and there has the Duke must not lose his, contrary to his way and all Justice, by a prevailing Faction of his the

feriours.

Who ever told him, That God was Incented against Esau for selling his Birthright? It is not God purpose the Birthright to Jacob, huse fore the Brothers were born, and before they had done Good or Evil? could God be angry with him for agreeing and executing his own Purpo and Decree? Did not Isaac and Rebekah both know and understand the Oracle, and in Obas for ence to it, Jacob was effectively Blessed by his Father Isaac's confirming the Blessing first gotte by surprize, and by the Solemnity of that Blessing, his Father Isaac transferred the right of the Promise made to Abraham, to be sulfilled in the Line of Jacob? indeed the place he quotes the Iz. 17. is this, Let no Whoremonger or Ir aphane Person be amonst you, like Esau, that would prefer a Sensual pleasure before the great thing the

Wherein the mention of Esaus Stoing ort of the Grace of God, and the designs of his en holy Institution. Indeed, if he could prove to f 1, s, that his Royal Highness, being the younger ten fother, had any such thing transmitted to him in his Generation, as the Jews called the Segulah. ells by which they mean some peculiarity, which did nie propriate the Right of the Promises made to Aete haham,) which Jacob had, and Esau wanted, they sway; If he had any Divine mark upon him (befides his the Contingency of his Birth) that defign'd him & mark'd him for a King, besidesiRoman Zeal, there cont would be some Consequence in his Discourse, and this would be the best Argument that he hath yet the him for it:) But where God doth not interpose by wherefs Revelation, Humane Affairs, Concerns bulluled by the Laws, Orders and Decrees of the re-Des spective Governments. I would not have been by ho long in animadverting upon this last passage, out but that I think our Considerer hath taken into this assistance in these Considerations some Diof vine, by his abounding so much in Scriptural at Allegations: And that hereby you may see the Size of the rest of the men of that Order, that he Cause of the Succession, and that they ought to be of little regard in this mathing ter, as they deserve none; it being not in their L4

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way: though in matters that belong properly to their Function, they may deserve much who are of the meanest of that Order.

Our Gentleman next proceeds to his political Arguments; but those can be answered, I perswade my felf, by every man who hath heard of Though a man of his Size may frame puzzling Arguments that may perplex mens Minds with scruples and doubts; which a Fool may do, and a Wife man cannot remove; yetit is scarce possible for him to deprive men of their Senfes, and make them infenfible to all the Evils that they hear, fee, and feel, and justly fear. If the Protestants are not (as he faith) very strong abroad, we have reason to be more united at home, and united by the awful Authority of a Law. If we are threatned with a great power of the Roman Religion from abroad, (which he affrights us with) we have no reason to retain the biggest power to hurt us within our own But if it be in the power of fuch bad men as this Pretender to divide by flights and wiles the good people of England, and keep them from uniting in the onely means of their fafety, we must perish: But Wo be to them by whom we are thus destroyed.

His last effort upon the minds of the People is to intimidate them, that by their fears they may fall under the evils they design upon us: he scatters his menaces, as if he were in the place of God against us, and as if he had the executing of the

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the Plot in his Power, and tells us of fins that fit us for ruine. It is convenient to these Plotters to imagine us mighty wicked, that they may believe we deserve the Vengeance they design. Our Government it self, our Laws, our Religion must become wicked, when they arrive to a probable power to hurt us: They never contrive a Gunpowder Plot, a Massacre, or burning a City, but they dream the iniquity of the People is grown ripe; They would turn us into Sodom and Gomorrha (which this Considerer frights us with) if they could call for Fire from Heaven; and then publish us to all the world (if we were much better than we are) to be as wicked as the Cities of the Plain. If we cannot obtain this Bill, Ishall then begin to think, that the Decree is gone forth, and our Fate is approaching, and that God will let these Villains have their will over us, By Gods displeasure, not theirs, I shall take the true measures of our Sins; His displeasure will be remarkable and evident, if he feems to deny us the means of our Safety and Preservation, and which is the onely means of the Kings Salvation from their Traiterous design. If this Bill do not pass, they will take him for a wicked King too; and they will fay, he hath no lawful Isfue to succeed him, for his own fins (though our Considerer saith at present, that our Sins are the cause of it) and many other remarks of wickedness they will make upon him, when they find it convenient and for their interest to destroy him;

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him; at best he will be then but Tenant at Will to them of his Life, as well as his Crown, which this Considerer most flanderously chargeth to be designed by us: but if he will follow the counsel of that excellent Bill, he may live long, and see good days, and peace upon our Israel; to which let all good people say, AMEN.

I shall onely remark two or three things in the close of the Paper of Weighty Considerations. First, that he undertakes to say and affirm, that the King is as much fubject to the Power of the Parliament as the Duke; which doth dethrone the King himself, and lessens him to the degree of a Subject. Secondly, that in this his Address he perswades the King to rend the Government, to lay afide the Commons of England, and abandon them as Rebels; to divide from them, and govern by a House of Lords and Privy Council. And thirdly, that the most venerable and Loyal Parliament that ever was conven'd in this Nation, though not so clearly purged from the corrupt Villains of the late long Parliament, as the next we hope will be, are charged by him to follow the Anarchical encroachments of the Faations in the Rump-Parliament; by which he infinuates that we must become Papists, admit of a Popish Successor, or be used as Rebels and Traitors: by these three remarks it is evident, what Principles and Defigns these men are of, that oppose the Dukes Bill; and from thence you may find reason to assist it, and promote it with with the greatest unanimity and resolution; and the rather, for that the Duke himself cannot want Considerations to dispose him to approve of it.

For what should he do with a Crown that he cannot wear? Why should he accept of a trust that he cannot discharge, and a Government that his Principles oblige him to transfer to a Forein Prince? he is too generous a Prince to enter up-

on a Province onely to betray it.

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He is a Prince of great Charity it was that surely mov'd him publickly to confess the Roman Religion, that he might thereby recommend that Religion to our belief, for the better reforming us from Heresie: Why then should not the same Charity move him to renounce the Government, lest he should offer an irresistable temptation to the People to a Rebellion? a greater sin accounted by a King, though a Catholick, (however the Priests rate it) than an errour in belief.

But how can we imagine that he will condefeend to be our King? He doth not intend to accept of our Oaths of Allegiance, and had rather not be King, than we should be his Subjects upon those terms. Why should we trouble him with the name of King, reproach him, call him Apostate, Heretick, and Insidel, by swearing our selves his Subjects in the terms of the Oaths of Allegiance and Supremacy? Pray think no more of it, write no more Great and weighty Considerations; for he intends to be no more your King,

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than he doth to defert his Religion and the Ro.

Besides, his Zeal and Services, and the Difficulties that he hath undergone for that Church, and the hazards he hath incur'd, deserve the best place, and highest office in that Church, which is that of a Priest; he ought not to be put off, and meanly rewarded with the Sheriffalties, which their Eminencies of the Conclave despite, and be preser'd to all the Drudgeries and Crueltics that the Priesthood of that Church require of the Kings of that Communion that become Zealots.

He is a Prince that can deliberate and consider, and will conclude, that it is better for him to betake himself to a Monastery now, before he hath filled the Land with Blood and Slaughter, and all the mischiefs that the hellish Plot designs upon us, than to take Sanctuary in one hereaster, loaded with the melancholy considerations of a lost design, and intolerable guilt, if he himself should chance to survive, and not perish ingloriously in the enterprize, never to be gathered to his Fathers, and shut out of the Sepulchers of Kings.

He is a great lover of his Brother, as he ought in gratitude to be, who lets him live, and in his good opinion too, after he had departed from his Allegiance, and become a Member of another Hostile Polity and Regimen, and after, in consequence thereof, the Kings Life is brought in conspicuous danger: Besides, that it was natu-

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ral and necessary that attempts upon the Life of the King should ensue upon his publick declaration of himself to be a Papist. And we cannot, without thinking too meanly of him, think him without a foresight thereof: there remains therefore no way for him to avoid the guilt of his Brothers Murder, (we tremble at the probability of it) than by renouncing the Crown. The King cannot in probability die before him, except he falls to the Interest of that Religion which his Highness doth profess. So that the Duke will relinquish nothing by the consenting to the Bill, but the hopes to succeed upon his Brothers Murder; but he would not the one (so virtue ous we will think him) to obtain the other.

Admit him to be King, he must be a King without Subjects; for he must be a Slave to one part of the people to destroy the other: these may not be, the other will not be his Sub-

jects.

To be an open Enemy is more Princely, than to submit to the sordid methods of Falshood and Treachery, than to betray us and deceive us in the confidence we justly should have in him, if he should succeed to the Crown by a legal appointment. He hath already departed from the Government, which is Treason in a common person; but we will give it in him an honester name, and call him onely an Enemy to our State and Religion, and his departure to be an overt declaration of Hostility; let him therefore be consistent

fistent with himself, purchase the Government by Conquest, by the assistance of the Arms of France, his Popish adherents, and home-bred Traitors. But let him not assume the Crown by The tle and Succession, under obligations to govern by Law, and to preserve us in our Religion, which is our Legal Right, and more precious to us than any thing else the Law entitles us unto. Let him not add falshood to his mistaken and cruel zeal, and do all the mischiess the Plot designs, while he pretends to Govern. Let him openly assault us Miscreants, subdue us Insidels, that already stand Cursed and Excommunicated, whom he hath Warrant enough from his Religion to

destroy with an utter destruction.

He is an excellent Son of King Charles the First, of blessed Memory, who died a Martyr for the Government of Church and State, and lost his Life as well as his Government, when he could not preserve it any longer by his Sword; And do you think that James his Son, who carries the Royal Name of his Grandsather, though the first of England, yet the Sixth of that name in Scotland, will suffer the Government to be altered, and to be a King and no King? It is more just for him to chuse an Exclusion from the Succession, than to suffer the Government to be changed; we must therefore suppose him to be willing rather to consent to the Bill and renounce the Succession, conformab y to the recent example of his never-to-be-forgotten Father, than

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o consent to, or be bound by any Act of Parliament that shall alter the Government: They are not his Friends, nor agreeable to him, that would spoil the Government, more valuable in his esteem (as well as his Father's) than a personal Reign: That would make him a King in mockery; That conspire against the Government it self, which he will not, he ought not to sustain and endure, as long as there is any Iron and Steel in the hands, or Bloud in the Veins of Loyal Roman Catholicks.

He is an equal Prince, and will not take it formuch to Heart, that he fees the people of his Nativity not stupid Sots, but that they can be sensible of the dangers that he urgeth them with, and provide apt remedies against the evils which threaten us.

But if these Reasons will not obtain his express Consent to that Law for his Exclusion, they will be allowed inducements sufficient enough to pass it and conclude his Assent; for the nature of a Law is, to be first reasonable, and to make those willing that should be consenting to it as reasonable and fit, but are not, and to render them obedient and submitted: For this is one of the greatest benefits of Government, that they that cannot or will not chuse what is best for themselves, the

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[178]

Laws will chuse for them, with regard to the Publick Good.

For the better clearing the matter of the Constitutions of this Realm, in relation to the Succession, I thought it necessary to add the substance of an Ado of Parliament yet in force, made 13 Elizabetha.

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An Act whereby certain Offences are made Treason.

Desimuch as it is of some doubted, whe I ther the Laws and Statutes of this Realm, remaining at this prefent in force, ne vallable and sufficient enough for the mety and prefervation of the Queens most Royal Person, in whom consider hall the hapvinels and comfort of the whole State and dubjects of the Realm: Which thing all faithful, Loving, and Dutiful Subjects ought and will with all careful study and zeal consider, foresee, and provide for; By the negleating and passing over whereof with winking Eyes, there might happen to grow the subvertion and ruine of the quiet and most pappy State and present Hovernment of this Realm (which Sod defend.) me, ec. to Declare, ec. during her Maielies life, that the Right of the Crown was many other Person, thousa be Treason, And luch Person that should, during her Waiedies Life, Murp the Crown, of the Royal Stile, Title, or Dignity of the Crown or Realm of England, etc. they, and every of them to offending, thall be utterly disabled, during their natural Lives onely, to have or mion the Crown or Realiss of England, or the Style, Citle, or Dignity thereof, at any time in Succession, Inheritance, or otherwife,

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wife, after the Decease of our said Sovereign Lady the Ducen, as it such person were naturally dead: any Law, Custom, Pretence, or matter whatsoever to the contrary not withstanding. After which, these words follow.

And be it further Enacted, That if and Derson shall in any wife hold, and affirm or maintain, That the Common Laws of this Realm, not altered by Parliament. ought not to direct the Right of the Crown of England; D2, that our said Soveraim Lady, the Queens Wajetly that now is, with and by the Authority of the Parliament of England is not able to make Laws and Statutes of sufficient Force and Calibity to 16 mit and bind the Crown of this Realm, and the Descent, Limitation, Inheritance, and Sovernment thereof: Dz, that this present Statute, or any part thereof, or any other Statute to be made by the Authority of the Parliament of England, with the Royal Alfent of our faid Soveraign Lady the Queen, for limiting of the Crown, or any Statute for Recognizing the Right of the faid Crown and Realm, to be Juffly and Lawfully in the most Royal Person of our said Sove raign Lady the Queen, is not, are not, of Mail not, or ought not to be for ever of god and sufficient Force and Calibity to Binde, Limit, Restrain, and Govern all Persons their Rights and Titles, that in any wife may or might claim any Interest or Possible lity in octo the Crown of England, in Polel sion, Remainder, Inheritance, Succession, of otherwise howsoever; And all other Perfons whatfoever, every fuch person so hole ding,

ding, affirming, or maintaining, during the life of the Ducens Baieth, thall be admidged a Digh Craitor, and lufter and foresit, as in Cates of High Creaton is accumomed; and every Person so holding, affirming or maintaining after the Decease of our said Soveraign Lady, half torseit all his bods and Chattels.

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BOOK, published 1679.
Intituled,

ALETTER

FROM A

GENTLEMAN of Quality
In the COUNTRY, to his Friend, &c.

Relating to the Point of SUCCESSION to the CROWN, &c.

If opt in the Press, from a few days after the Great and Weighty Considerations were published; and being now ready to come forth, we have a Gentleman of Quality, as he calls himself, undertaking from Scripture, Law, History, and Reason, to show, how improbable (if not impossible) it is to bar the next Heir in the right

ight Line from the Succession, in a Letter to his moured Friend A. B.

And now after so long a time of consideratino, one would think the many men of great Parts
and Learning that are dependents on the Duke,
pirited with zeal and ambition, should have offered all that they have to say against the Bill
for excluding his Royal Highness. And this
being (as may be reasonably concluded) the last
modeavours of the most learned and best parted
men of that Interest; This Letter for that reafon onely, but not for any thing of moment that
toffers, deserves to be considered.

We will not follow him from Paragraph to Paragraph, fince the greatest part of it is vain and empty, pedantick, bombast, and putid affecta-

tion.

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I shall onely draw you up short Summaries of his several Reasons, and give them all the advantages they can challenge, and improve them by just and natural Inferences: And that I think will be enough of confutation, and a sufficient countercharm against his deceiving the People.

He first lays down for a Ground, That the Succession to the Crown of England is inseparable unnexed to Proximity and nextness of Bloud, by the Laws of God and Nature; And all Statute-Laws contrary to the Laws of God and Nature,

are, ipso facto, null and void.

That it is contrary to the Laws of God, he M 3 proves

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proves by the Law of God given by Moses to the Jews in the 7th of Numbers, that directs how the succession of Lands should be amongst the Jews; and whatsoever Statute-Laws are contrary to those Laws are null and void, he saith.

The consequence of this Argument is this, That the Laws given by God to the Jews are Laws to all Mankind: That our Common-Law and Statute-Law is against the Law of God, and null and void, because not agreeable to the Laws of Moses: That the eldest Son is not to take by Descent the whole Inheritance, but a double portion onely, and that the Crown must be disposed of in Descents accordingly: That not the first Son only, and one Daughter, but all the Daughters of a King, if never so many, must succeed together to the Crown: That no Father can sell his Patrimony; for that was the Jewish Law, and established in that Chapter he quotes.

He proves it to be a Law of God further, for that God faith to Cain of Abel, That his desires shall be subject, and thou shalt rule over him.

The Consequence of this, is, that because Cain could not kill Abel, (notwithstanding he was to have the Primacy) That Abel much more could not kill Cain his Elder Brother.

And further he proves that to be a Law of God, because God maketh choice of the first-born to be Sanctified and Consecrated to himself.

And therefore it most certainly follows, with this Gentlemen, that he which is not the first-born

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born must be so too. I wish his Royal Highness, the second born, the Consecration of a Priest; (which the Text means, notwithstanding the Text doth not allow it him) so that he will not pretend to the Consecration of a King, which is dearly out of the meaning of the Text.

He says, Consonant hereunto are the Suffrages of the Doctors of the Civil and Imperial Law.

The Consequent of this is, first, That he is not bound to be coherent; for he was before proving the Law of God to be, That the Succession of the Crown is inseparably annexed to proximity of bloud, and now he tells us of some Opinions of Fathers and Doctors that are consonant thereunto, when they do not at all relate in their Opinions to what he had produced out of Moses his Law., Secondly, It follows, that he is impertinently troublesome to his Reader, by telling him of the Opinions of great names in this matter, that the Eldest Son by ordinary right is to have his Fathers Estate in some Countries, or that the Crown doth fo ordinarily descend where the Succession is hereditary; he should have spared them for another time, when he shall fay something that all mankind doth not agree in. Thirdly, That he is a man of little reading, otherwise he would have been insufferably impertinent by 10000 quotations in this matter. Fourthly, That he is no Civilian; for that in this place he calls the Soveraignty a Fee, when all men agree that a Crown is of that fort of Inheritances, which M 4

This would have made a swinging Argument for his Jure Divino, if he had thought of it, but we will give it them gratis. He tells us the Duke of Tork is in the same condition as the Eldest Son of the King Reigning, though his Brother be King: That the second Son of a King Regent, when the first is dead, living his Father, is within the 25 of E. 3. that makes it Treason to compass the death of the King's Eldest Son; and that such Second Son is Prince of Wales, and Duke of Cornwal.

The Consequence whereof is, that he is very impertinent, or else the Duke of *Tork* is now Prince of *Wales*, and Duke of *Cornwal*, and that

he is within the Statute of 25 Ed. 3.

This Argument of his he leaves to be further illustrated and pursued by the Church-men and Civilians: But lest they should fail, this Epistoler (for I now am well assured, that this question and cause is to be managed by the Sword, by Massacres, and the French Plot, and not by Writing) I have adventured, and will proceed to illustrate his Arguments, and pursue them into their Consequences, leave the Epistoler of Quality to be pursued with laughter; for he deserves no worse, if it be true that he professeth, that he is a Protestant and Lover of the Government.

Now he will, he faith, as best forting with his profession, and with a discourse of this nature, derive proofs from the Authority of the Com-

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From whence it follows, That the Common-Law and Statute-Laws of England are proper to be consulted with, for declaring the Laws of God, and the Laws of Nature; which they never yet pretended to do. And Secondly, it follows from thence, that this Epistoler no more understands the Common and Statute-Laws of England, and what place they are to have in the Conduct of our manners, and guidance of our Consciences; than doth (as appears by what he hath said before) what is the Law of God or Nature.

He lays it down as most evident, That all the humane Acts and Powers in the World cannot hinder the Descent of the Crown upon the next Heir of the Blood; because (though they may hinder the Possession and Enjoyment of it) This is a Dowry which the great King of Kings hath reserved to his own immediate Donation, and hath placed above the reach of a mortal Arm; and mankind can no more hinder or intercept it, than it can the Influences of the Stars or the Heavens upon the Sublunary world,

or beat down the Moon.

The Consequence of this is, that the man is Lunatick and of insane memory, and hath forgot and denies what in the same breath he affirms: For, he agrees humane Power may hinder the possession and enjoyment, and yet it is no more possible to hinder the Descent, than to stop the Insluences of Heaven, and to pull down the Moon. Secondly, It follows, that that which is done is im-

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impossible to be done. Thirdly, That there is no Right at all by Descent, nor can be any Descent of the Crown; for that it is reserved, as he says, to Gods immediate Donation: And we never yet heard of any immediate Gist or Donation thereof from God. And if the Duke will stay until that be done, we most solven lemnly declare we will accept him for our King; and he shall be a king to all intents and purposes (as he terms it;) we will be kinder and juster to him than his Friends of the same perswasion with the Epistoler, who will give him the Name and Style, and would Abridge him, as they pretend,

of the Power and Authority of a King.

He fay's further, That when the Duke is King, that the Legiance and Fidelity of the Subject is due to him by the immutable Law of Nature; from whence it clearly follows, that he must stay until that time comes: That when he is a Loyal and Foyal King, we are to be his Loyal and Foyal Liege-men and Subjects: For, Calvin's Case which he cites, by the general Opinions of all confiderable Lawyers, is Apocryphal, where it makes Allegiance absolute, and more extensive than the Legal Power of Kings. But here he subjoyns fuch loathfom Pedantry, that I cannot but remark it: He subjoyns to his mention of Calvin's Case, that Aristotle, Nature's Amanuensis (as he calls him) agrees with that Case, in that he saith, 'Agympos maring tiav etoen is Ramheus of Bamheuperon. and Seneca's Natura commenta est Regem. But for my promile

mile fake. I will make no further Observations upon him, than by bare repeating of it to expose it.

Nature, he proves; For that the Statute-Laws do frequently style the King our Natural Liege-Lord: And for further proof tells us, that in Indictments it is set forth, that the Treason is committed contra debitum Fidei & Ligeantiæ quod naturaliter & dejure impendere debet: And the King in Indict-

ments is sometimes styled Natural Lord.

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Whence it follows, that we are born under Allegiance; that no man that is born under any form of Government can deny Faith unto it, though he never expresly swore Allegiance. That the King of France is not our Natural Lord, neither doth the Oath of Allegiance bind us to that Form of Government, if introduced, because the King was born to no such Kingship: Nor is our King a Natural Lord to any Forreigners that come hither; and the Form of the Indictment against Forreigners, as the Lawyers know, must be in another Form. And further it follows, That in all changes of Government, the word natural is to be adjoyned to Allegiance in all Indicaments of Treason committed against the Government in its several changes that it may suffer; And this all the Lawyers with one voice pronounce.

He sums up all that he hath said before, thus: No humane Power can hinder the Descent of the Crown upon the Right Heir; the Descent makes

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the King, Allegiance is due to the King by the Law of Nature; The Law of Nature cannot be abrogated by humane Power: That Common-Law is more worthy than Statute-Law, and the Law of Nature more worthy than both. But upon better consideration of the whole matter, it follows with better Consequence, That Nature hath made no Laws about Property, nor about Governments; otherwise all Laws of Right and Property, and all Governments would have been the fame; for what she makes are Universal, as the Nature of man: Besides that if he knew where she became a Legislatrix, or if this Gentleman could direct us to a view of her Pandects, we ought to accord all our Laws to them. Secondly, That Common-Law is not to be preferred before Statute-Law; For the Judges who declare the Common-Law are not wifer than Parliaments; and the Common-Law appears so bad a Rule, that it requires oftentimes amendment. Thirdly, It follows, that no Legislation is Lawful, for that which is to be preferred is best, and that which is best is to be a Law for ever. Fourthly, That no Allegiance is due to any Prince, but whom the Law appoints, and as the Law appoints: That he that is not King, to him no Allegiance is due. That a humane Power is competent enough to alter as well as make any humane Constitution. That which by humane Authority was made, and made also descendible (for all Crowns are not descendible) can be altered

red by the same Authority in its Descent.

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The greatest part of this ensuing Discourse, is, the remembrance of the Tragedies that have been acted upon the English Nation by our Kings: For we have not onely suffered under their bad Government, but they have Usurpt one upon another, and we have been infinitely miserable by being drawn into Wars, to dispute which of them should Govern us after their own manner and fashion. If this Epistoler had had any regard to mankind, any bowels and commiseration for the vast Miseries and Calamities which we have suffered thereby, except he had depressed all mankind so far below this Jure-Divinity Head, as if they were no more confiderable than a swarm of Flies, and ought to perish by Thousands, to the Pleasure, Lust and Ambition of any that is big enough to pretend to a Crown; he had not here talked so gloriously of the Matter of Succession; he would have put the Crown in Cypress, and vail'd its splendour with a mourning dress; he would not have talked of Pearls and Oriency, (in his foolish style) Jewels and Gems of Magnitude.

But, if they, by Cruelty and Treachery have murdered one another, and usurpt upon the Legal Right of Succession, and did keep the people in a state of War for Centuries of years; shall not we exclude a single Person from the Succession, to prevent more and greater Miseries to be

execu-

executed perhaps in one year upon this poor Nattion, than the former Usurpations did produce in

Centuries of years?

fion.

But let him attempt the Crown, notwithstanding an Act of Parliament for his Exclusion, he is all that while but attempting to make us miserable; if he be not excluded, he doth it certainly: We exclude onely his Person, not his Posterity; and we will not intail a War upon the Nation, though for the sake and interest of the Glorious Family of the Stuarts.

The next Argument he produceth is this, viz that in Acts of Parliament the Right of Succession fion is called a Natural Right, and consequently that it is unalterable. The consequence of this Argument is, that a Right by Birth is a natural, Right, and that truly; for men are born by nature. Secondly, It follows, that no man hath a natural Right by birth to the Inheritance of his Father, or that his Father cannot give it from him, or he himself foreclose himself by Treason, and Felony. Or else it follows, that notwith! standing Princes of the Bloud succeed by the right of their Birth, which is a natural Right, or a Right by Nature; they may be set aside, and excluded the Succession to the Crown upon as great reason as we have for this Bill of Exclus

His Law-Farrago of Statutes that have been adjudged void, because unreasonable and impossible, concludes, that a Statute-Law in a matter

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that is not reasonable and impossible, is a good and binding Law; and therefore he ought to have a protound veneration and deserence to it (in which we use onely his own words in this matter, which are the least soolish) when it passeth.

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But if he cannot find the reasonableness of this Bill, in what we have offered, we may further conclude, that nothing will convince him but French Auxiliaries, and a Stack of Faggots in Smithsfield. If this Act be impossible to be executed, we must conclude that it is in the power of his Party to execute our Laws, Religion, and Government, and to Assassinate the Nation. We wish onely, on the behalf of our Religion and Government, that we had as great assurance that the Bill would passinto a Law, as the reasonableness is evident.

But this Epistoler (whose Province he saith is Law) nextly undertakes to say, That the Succession of the Crown to the next Heir of the Bloud, is a Fundamental and Primary Constitution of this Realm, and indeed the Basis and Foundation of all our Laws. The Succession of the Crown to the next Heir of the Bloud, is one of the highest, essential, and undivided Rights of the Crown. That no Person or Community can give away, or transfer, a thing which they never had to give. Of this nature is the Right of Succession to the Crown, which is not the gift of a man, but the immediate Dowry (that

(that Word he is fond of) of God, Nature, and

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the immutable Customs of the State.

Whence it follows, that God, Nature, and the immutable Customs of State, met together once upon a time about this matter; or that the immutable Customs of State did sometime consult God and Nature about this matter, and agreed their Sentiments. Or,

God, and Nature, and immutable Customs of State are all one: That Customs of State are made without People: That Customs of State are as immutable as God and Nature: That God and Nature cannot alter that which is once a Custom: That God cannot be heard, though he interposeth with all the Obligations that he lays upon us to Humanity and Justice, from his own Philanthropy and Justice, to protest the whole Body of an innocent Nation, from, destroying Zeal and wasting Superstition; nor Nature her self be heard in her close injunctions of felf-preservation: But immutable Custom a more powerful Supream, must prevail against God and Nature, though at first they stuck together in making this Primary Constitution the Basis and Foundation of all Laws: for nothing else was certainly in the mind of God and Nature so much, as to set up a Royal Family amongst us a part of Mankind. And to shew a particular kindness to the English People (for he hath not dealt so with every Nation:) That he doth not certainly think us worthy of any Laws, nd

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Laws, any Lives or Estates, if we do not accept of this fingular favour; nor if we do accept, wo worth us miserable people. But Laws, it seems, we can have none without it; for that's the true Basis and Foundation (saith he) of all Laws. And this follows with good reason; for the Succession of the Crown to the next of Bloud, is one of the highest, most essential, and undivided Rights of the Crown: for it is clear we must lole our present King, and he be divided from his Life and Crown, rather than the Succession be divided from the next of Bloud; and after that, what matters it what becomes of the People, of no regard certainly, of no regard at all, nor to be considered, where the Rights or pretences of Kings are concerned.

And further, because Kings cannot alienate the Crown, which doth not lie in Dominion, but in Trust; not in Property, but in care; for Officium est imperare, non regnum: And because that people cannot be sold like Droves of Cattle: therefore it is with clear and irrefragable reason infer'd by this Letter-writer, That the King must not live; that he cannot remove an irresistible temptation against his own Life: And we must receive a King that hath devoted us a sat Sacrifice to his cruel Superstition, as his party hath our King, that they may more easily come at us.

Laftly,

Lastly, he saith, That the right Heir of the Crown cannot be bar'd or excluded by Ast of Parliament; because the Accession and Descent of the Crown in an instant absolutely purgeth and dischargeth all Obstructions and Incapacities whatsoever, created by the same Ast of Parliament.

From whence it follows, that the Earl of Danby, if he were the next Heir, might succeed, if he should be attainted of Treason of State by Parliament; whereas if the King cannot pardon him, as he cannot, he could not in that case of the descent of the Crown pardon himself. The Heir of the Crown attainted, upon the devolving of the Crown upon him, is therefore purged from the Attainder, because he can pardon himself, and is intended to do so; but a Treason of State can never be pardoned by the King. Our young Lawyer knows well enough, that an incapacity by Act of Parliament to execute an Office growing upon a moral disability of executing the trust of that Office, is not in the Kings power to pardon. Secondly, from hence it tollows, that that Attainder which leaves a capacity to obtain a Pardon of the King, doth not at all differ from an Attainder that excludes all capacity from the King to pardon, and which in the Constitution of the Government hehath no power to pardon; such are all Treasons of State where the King is not the Pars læsa, and where it is not a private wrong, a fingle crime, but the

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ly, hence it clearly follows, that he that is no King, and upon whom the Crown can never defeed, (as it will not if this Bill passeth into an Act) he being without the Imperial Crown, without right, and without possession of it, is yet a King. That there is no difference between an Act of Parliament which leaves the Successor to a possibility of being purged from the Attainder it makes; and that Act of Parliament which leaves no such possibility, but doth most absolute by and expressly exclude him.

His Positions must therefore be false, and his Arguments not concluding, from which such not torious falshoods and absurdities are naturally infer'd.

Instead of further argument, he tells us a mater ter of Fact, of an Act of Parliament made 28 H. 8. cap. 7. to render Queen Elizabeth incapable of Succession: And that she notwithstanding got into the Throne: And that Sir Nicholas Bacon (who had consulted the Judges) told the Queen, that there needed no formal Repeal of the said Act; for that Corona semel suscepta, omnes omnino defeatus tollit.

The consequence of this is, that if the Duke can, notwithstanding an Act for his Exclusion, get into the Throne, he will; and so let him. Se-

condly, that a King de facto, though a bad one, is not to be removed at the expence of a Civil War; that it is madness to part with a good one, when in possession, and cruelty to the People.

Detrahere Dominum urbi servire parata.

But afterwards in the 35 of Henry the Eighth, the Crown was limited by Act of Parliament, in case the King and Prince Edward should die without Heirs of either of their Bodies, to the Lady Mary and the Heirs of her body; and for want of such Heir, to the Lady Elizabeth and the Heirs of her body.

- We are no ways concerned in the justification of our Bill, to approve of the humorous Caprice of Henry the Eighth, and the arbitrary Laws that he made in his time about the Succession: they are instances of his haughty Government, that he imposed upon Parliaments, and that he took the Crown to be at his dispose, and transferrable at his pleasure, as his Money and Lands: a great indignity to Mankind, and an injury to the nature of Government! But that the Succession of the Crown is the right of the whole Community, their Appointment, their Constitution, and Creature in Parliament, and alterable as far the Bill defigns, and for fuch reasons as presseth and urgeth in the Case of the Duke. Whether this, I tay, is not to satisfaction proved in these Sheets:

Sheets; and whether this Epistoler hath produced any shadow of Reason to prove the contrary, let the World judge: And whether he hath given us any thing for reason, but the insignificant bluster of Words, canting Language, and pedantick Nonsence, which will never pass with any man of the least spark of sence for Argument.

Neither do we place the Right of Succession to Government in the same rank with private Inheritances; nor ever were they governed in any Country by the same Rules; though this Epistoler hath produced the Laws of God by Moses to the Jews (which was onely to govern private Inheritances amongst them) to prove the unalterable Succession of the Crown amongst us: which is so wild an impertinence, wherewith he begins his Letter, that he will be ashamed of it when he reviews it, and conceal his name for ever with care.

That there is one Rule for the Succession of the Crown, and another for the Succession of private Estates, is from these Reasons; That private Inheritances are disposed of in Succession, according to the presumed Will of the Decedens, which is collected from the general Opinion and Practice of the people in disposing of their Estates by Settlements; or by their Wills and Testaments, in case of Allodiums: or else the Succession goes according to the direction and limi-

limitation of the Lord made in the first collation of the Fee in case of Fees But the Descent and Succession of the Crown is governed and directed by the presumed Will of the People: And that presumption of the Peoples Will is made by measuring and considering what is most expedient to the publick good, or by the express limitation of the People in their conferring the Royal Dignity. In Allodiums, in defect of Heirs, the Inheritance belongs to the Soverain Power, as a thing that is *Nullius in bonis*, and hath no owner. In Fees, when the Family is extinct it Escheats to the Lord of the Fee.

In Crowns, upon the extinction of the Royal Family, it belongs to the People to make a new King, under what limitations they please, or to make none: for the Polity is not destroyed if there be no King appointed; and consequently in case of this cesser or discontinuance of the Regnum, there may be Treason committed as

gainst the people.

That the Succession of the Crown is directed according to the presumed Will of the People, and collected from what is most expedient, gives us the reason why one Daughter or Female of the next degree shall succeed to the Crown, and not all, if more than one; whereas a private Inheritance is equally divided amongst them all: For it is the Interest, and therefore the presumed Will of the people, that the Kingdom should continue undi-

undivided. The strength of the Kingdom is preserved in being continued united, and the Peace and Concord of the People thereby establed.

That a Son by the Second Venter shall succeed to the Crown, which is not allowed in private Estates, is, because one so born is equally of the Family of his Father; and the expectation of the people as great from him, being descended from that glorious Person upon whom the Crown was conferred by the people, or who after he had got into the Throne, obtained the submissions of the People. The same reason admits an Alien born, though he be estranged from us by his Birth.

Est in Juvencis, est in equis patrum virtus.

Though what I have said in this matter, is so obvious, that no considering man can escape these thoughts, yet I cannot think it impertinent to add it here, to clear what I have said down in the precedent Sheets, as an undoubted truth, and evident in it self; That the Succession to the Crown is the peoples Right. But there is nothing, I perceive, to be allowed clear and evident, when we live in an Age wherein Fools and most ignorant persons will undertake, by the Liberty of the Press, to print and publish to the world their crude thoughts, and with great assurance offer their uncouth Opinions with astonishing presum-

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ption. Besides, to the reasonableness of this Doctrine, it is agreeable to the Illustrious Grotius,

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De Jure Belli & Pacis, Lib. 2. cap. 7.

And nothing follows from his collected Lawcases about the different Rules of Succession of the Crown from private Fees, but that he is a very young Lawyer, or an old senseless Jobber of Law-Cases.

But I hope that all men that read him, will with refentment think themselves used with scorn, when they see what frivolous Fellows attempt upon them to deceive them; and will be fully convinced, that the Bill is reasonable, just, and sit, since they have nothing better to object a-

gainst it.

The last endeavour of the Epistoler is to remove the Authority of Parliaments, and the Act made in the Thirteenth of Queen Elizabeth. The Words of which are printed at the close of the Papers against the man of Great and Weighty Considerations. Our case is not in its reasons unparallel to those that introduced that Law, and occasioned the making of that Declaration; but whatever was the particular Reason, the Declaration of that Parliament in that Act is general, and therefore it is an Authority not to be impeached, to prove that there is fuch a power to alter the Succession of the Crown, for great Ends, and weighty Reasons, and just Causes. Besides, that fuch a power is lodged in the Parliament, is clearly proved by us from the nature of Government,

ment, in the foregoing Sheets: As also, that such a power will not be abused by using it in this Bill of Exclusion, of which I hope no body upon the reading of them will retain any longer any manner of doubt. But I cannot, before I have done, but take notice of his little Artifice, in that he doth suggest, that by the Act of Parliament of the Thirteenth of Queen Elizabeth. cap. 1. the Title of the Family of Stuarts is excluded; when it is evident by the words of the Act, that the Disability there enacted is only per-And his story of Monsieur the Duke fonal. of Anjou designing then to marry the Queen, is a false and malicious infinuation, to hurt the memory of that excellent Princess. consequently, that King James and his Race had, and have, notwithstanding the validity of that Act, a good Title to the Crown: And that the validity of that Act may be maintained, without derogation and injury to his Majestie's facred Title, whom God long preserve.

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A short Historical Collection touching the SUCCESSION of the CROWN.

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Hether the History of the Succession of the Crown will allow so good and clear an Hereditary Right, *Jure humano*, as we have yielded in the precedent discourse, the Reader will best judge by the short Historical Collection touching the Succession hereto subjoyned.

In the Heptarchy there was no fixt Hereditary Right, one King tripping up the heels of

another, as he had power, till one got all.

After that, Alfred, Bastard-son to Oswine: Adel-stane, Bastard-son of Edward the Elder: Edmund, Surnamed the Martyr, Bastard-son to King Edgar: Harold, Surnamed Harefoot, Bastard-son to Canute, wore the Imperial Crown of England.

But a Law was made under the Saxon Monarchy, De Ordinatione Regum, directing the Election of Kings, and prohibiting Bastards to be chosen.

Edward the Confessor was no King Jure Hæreditario; but the right was most indisputably at
first in Edward Son of Edmond Ironside, Father
to Edgar Etheling his Nephew, during his life;
and after his decease, in that Edgar, who was Nephew also to the Confessor.

William

William the First, called the Conquerour. was Baftard, and had no right but from his Sword, nd the Peoples Submissions, and their Electing

William Rufus was elected against the right of

Elder Brother Robert then living.

nof Henry the First was made King, favente Clero lear Populo, his Brother Robert still living, whose ave yes were after put out at Cardiff-Castle in

der Vales.

King Stephen was elected à Clero & Populo, ed. ad confirmed by the Pope, and Maud Daughter

edi- Henry the First excluded.

of Henry the Second came in by confent, yet he ad no Hereditary right; for his Mother Mand del the Empress, Daughter and Heir to Henry the

Ed. lift, was then living.

the

ing King John had an elder Brother Jeoffery Earl son of Britany, who had Issue Arthur and Elianor, ing. Thich ought to have succeeded before him; but e Arthur his Eldest Brother's Son living, ar- was elected à Clero & Populo; and being divortle. ed from his Wife, by his new Queen had Henry be the Third.

Henry the Third was confirmed and setled in he Kingdom by the general Election of the peoe; Elianor, Daughter to Jeoffrey the elder Bro-

her, still living.

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ner fe;

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Roger Mortimer Earl of March, Son of Edmund y Philippa Daughter and Heir of Lionel Duke clarence, a younger Son of Edward the Third,

was

was in the Parliament 9 R. 2. declared Heir Ap was parent of the Crown; which could not be but by wh force of an Act of Parliament.

Henry the Fourth came to the Crown by way that of Election; and in his time, viz. in the eight for year of his Reign, was the first Act of Parla his ment made for Entailing the Crown with Recommainders.

By vertue of which, his Son Henry the Fift rig became King, and after him Henry the Sixth. by

In Henry the Sixth his time, Richard Dukeo Al Tork claimed the Crown; and an Act of Pall of ament was made 39 H. 6. that Henry the Sixt in should enjoy the Crown for his life, and the said in Duke and his Heirs after him. After which, King the Henry raises an Army by the affishance of the Queen and Prince, and at Wakefield in Battle kill Fithe Duke; for which, I Edw. 4. they were all by in Act of Parliament attainted of Treason; and wone principal reason thereof was, for that the Duke being declared Heir to the Crown after Henry by Act of Parliament, they had kill'd him: which Act of Attainder was I H. 7. repealed, and the Bloud of the King, Queen, and Prince restored, in terms of disgrace and detestation of so barbarous an Attainder, Rot. Parl. Anno I H. 7.

Edward the Fourth succeeds upon the death of H. 6. by vertue of an Act of Parliament made in the time of H. 6. for entailing the Crown as Son

and Heir to the Dake of Tork.

Edward the Fifth succeeded by vertue of the same Act of Entail.

Richard the Third having got the Crown, he was confirmed King by Act of Parliament; but which likewise Entail'd the Crown: which was done upon two reasons pretended: First, for what by reason of a precontract of Edward the right fourth, Edward the Fifth his eldest Son, and all Parlia his other Children, were declared Bastards. Seh se condly, for that the Son of the Duke of Clarence, second Brother to Edward the Fourth, had no Fifth right, because the Duke was attainted of Treason the by a Parliament of Edward the Fourth. The taken Act of Parliament for Bastardizing the Children Parlia of Edward the Fourth, was in force until repealed Sixt in the time of Henry the Seventh, after his Marke sair riage with Elizabeth the Daughter of Edward, King the Fourth.

Henry the Seventh comes in by no legal Title:

kill First, because Edw. 4th his Daughter was then living. Secondly, his own Mother was then living. In his first Parliament the Crown was Entail'd upon him and the Heirs of his body. And observable it is, that after the death of Elihim: zabeth his Queen, Daughter and Heir to Ed. 4th, there is no notice taken of any right which was pretended to by Hen. 8. during his Fathers life, as being Son and Heir of his Mother, who had the legal Right to the Crown by an ordinary right of Succession.

Henry the 8th Succeeded, who did (as all his Son Laws speak) derive his Title to the Crown by the Fathers side, and not by the Mothers. In

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his

his Reign the Crown was Entail'd thrice by Act of Parliament, Confirm'd by the general Oaths both of the Spiritualty and the Laity; and it was made High Treason to refuse such Oaths; and several Attainders were in his time by particular Acts of Parliament of several persons who opposed such limitations of the Crown, and the authors.

rity of the Laws that made them.

But the great Law of the three was made in the 35th year of his Reign, Cap. 1. whereby power was given him to give and dispose by his Letters Patents, or by Will, the Imperial Crown of the Realm, to remain and come after his death, for want of lawful Heirs of Prince Edward, the Lady Mary, and the Lady Elizabeth, to such person or persons, in remainder or reverfion, as thould please his Highness. In which Act there was a Clause, that made it High Treason to speak or write against that Act, or to go about to annul or repeal it. Besides, there is another Proviso in that Act, That if the Lady Mary should not keep such conditions which the King should declare by his Letters Patents or last Will, the Imperial Crown should come to the Lady Elizabeth: And if the Lady Elizabeth should not observe the same, then the Crown was to go to such person as the King by his Letters Patents, or last Will, should limit and appoint.

By virtue of which limitation in the Act of Parliament afore-mentioned, Fdward the Sixth succeeded to the Crown, and after him Queen

Mary:

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Mary:in whose Reign, in an Act of Parliament for Confirmation of the Articles of Marriage between her and Philip of Spain, the Crown was again Entail'd; but she dying without Issue, the Lady Elizabeth became Queen, who had been declared a Bastard (as well as her Sister Mary) in the life of their Father; and therefore succeeded to the Crown by force of the Entail made in the 35 H. 8. Cap. 1.

Pursuant to these Presidents in fact, in the 13 year of the Reign of Q. Eliz. an Act of Parliament was made, declaratory of the power of Parliament in the limitation of the Succession, which made it highly penal to deny the Authority of an Act of Parliament for the limitation of the Crown. Several persons in her time were proceeded against upon that Act, and had the Judgement of Traytors, and as Traitors executed for

being contrary to that Law.

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This Queen dying, King James succeeded, who was (as the Statute of Recognition made in Parliament the first year of his Reign, declares) lineally, rightfully, descended of the most excellent Lady Margaret eldest Daughter of the most renowned Henry the 7th, and the high and Noble Princess Queen Elizabeth his Wife, eldest Daughter of King Edward the 4th, the said Lady Margaret being eldest Sister of King Henry the 8th, Father of the High and Mighty Princess of samous memory Elizabeth late Queen of England.

It is further observable, that upon the Marri-

age of Queen Mary to King Philip of Spain, both the Crowns of England and Spain were entailed; whereby it was provided, that of the several Children to be begotten upon the Queen, one was to have the Crown of England, another Spain, another the Low Countries: The Articles of Marriage to this purpose were confirmed by Act of Parliament and the Popes Bull.

And by that Act of Parliament for confirming the Articles of Marriage, Philip was created King, and did exercise Soverain Authority, and particularly in making Laws together with the Queen; the Stile of the Soveraign Assent to Bills in Parliament in their time being, Le Roy &

la Roigne les veulent.

And likewise for that it was agreed by the States of both Kingdoms, and the Low Countries; it is therefore probable, that it was the universal opinion of the great men of that Age, That Kings and Soveraign Princes, by and with the consent of their States, had a power to alter and bind the Succession of the Crown.

FINIS.

ERRATA.

Page 226. line 9. read committed, for omitted. p. 249. r. priorem & idem. 252. l. 1. after reason, add And. 258. l.22. r. Talked. 272. r. congruum & consentaneam.

PREFACE.

Page 2. 1. 4. r. burt their.

POSTSCRIPT.

Page 7.1. 2. r. foild. p.29.l.vlt. r. thereof. p.43.l.20. after felf, r. it. p.45.l.12. for de r. do. p. 57. l. 6. r. dream of a shadow. l. 61.r. English, r. Gods we.p 63. r. Lampada. p.72.l.24. r. by the State. p.74. l.24. r. pretended to, used or exercised. p.83.r. Mogol. p.94.r. nemisus. p.104.l.13. after retain, a Comma wanting. p.124.l.12. r. intended. p.139.l.3.r. that we will not. l.23. dele so. p.144.l. 24.r. both doth. p.169.l.3.r. what they fell short of, and for what in the grace of God. p.187.l.11. r. than he doth. p. 193. l.1. r. unreasonable. l.6.r. when it passets into a Law. l.18. reasonableness thereof.

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